BIENNIAL REPORT
OF
CLARENCE L. IRELAND
ATTORNEY GENERAL
OF COLORADO
1931 - 1932

Biennial Report

of the

ATTORNEY GENERAL

of the

State of Colorado

Years 1931 and 1932

CLARENCE L. IRELAND
Attorney General

The Bradford-Robinson Printing Co.
Denver, Colorado
1933

ATTORNEYS GENERAL OF COLORADO

From the Organization of the State

A. J. Sampson	1877-1878
Charles W. Wright	1879-1880
Charles H. Toll	1881-1882
David F. Urmy	1883-1884
Theodore H. Thomas	1885-1886
Alvin Marsh	1887-1888
Samuel W. Jones	1889-1890
Joseph H. Maupin	1891-1892
Eugene Engley	1893-1894
Byron L. Carr	1895-1898
David M. Campbell	1899-1900
Charles C. Post	1901-1902
Nathan C. Miller	1903-1906
William H. Dickson	1907-1908
John T. Barnett	1909-1910
Benjamin Griffith	1911-1912
Fred Farrar	1913-1916
Leslie E. Hubbard	1917 1918
Victor E. Keyes	1919-1922
Russell W. Fleming	1923
Wayne C. Williams	1924
William L. Boatright	1925-1928
Robert E. Winbourn	1929-1930
John S. Underwood	1930
Clarence L. Ireland	1931-1932

STATE OF COLORADO LEGAL DEPARTMENT

Attorney General

Clarence L. Ireland

Deputy Attorney General

[1]Charles Roach
[2]Fred A. Harrison
George A. Crowder

Assistant Attorneys General

Sidney P. Godsman
[3]Fred A. Harrison
[4]A. L. Beardsley
Edward J. Plunkett
Arthur L. Olson
[5]Wallace S. Porth
[6]Miss Hazel M. Costello
[7]George A. Crowder
[8]George T. Evans
Colin A. Smith
Oliver Dean
Tom L. Pollock

Stenographic and Clerical Assistants

Miss Margaret E. Fallon
Miss Anna G. Landy
Mrs. Elizabeth D. Patten

Inheritance Tax Commissioner and Assistant Attorney General

Andrew H. Wood

Deputy Inheritance Tax Commissioners

A. M. Morris
O. S. Brinker
J. W. Klein

Inheritance Tax Appraisers

G. W. Moscript
Leland S. Boatright

Stenographic and Clerical Assistants

Mrs. Margaret M. Kranich
Mrs. Marie A. Powell
Mrs. Lillian Kiesler

Legislative Reference Office

Allen Moore, *Director*
Clair T. Sippel, *Secretary*

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[1]Resigned July 1, 1931.
[2]Resigned February 12, 1932.
[3]Appointed Deputy July 1, 1931.
[4]Resigned July 1, 1931.
[5]Appointed July 1, 1931.
[6]Appointed July 1, 1931.
[7]Appointed Deputy February 12, 1932.
[8]Appointed May 10, 1932.

BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF COLORADO

SCHEDULE I

To His Excellency,
WILLIAM H. ADAMS,
Governor of Colorado.

Dear Sir:

In compliance with my official duty, I have the honor to submit a report of the office of Attorney General covering the period from January 13, 1931, to January 10, 1933. The same is submitted under three general headings:

1. Preliminary summary and report.
2. Cases disposed of and still pending in court, either Federal or State.
3. Opinions rendered during the term.

The report contains a complete list of all cases, both civil and crimnial, State and Federal, in which this office appeared for the State or its officers, together with a brief statement of their status and disposition.

All of the official opinions rendered during the term are listed in this report, the more important ones are set forth in full, and a *syllabi* of all other opinions are included in chronological order.

CONDUCT OF THE OFFICE

Many important matters have been presented to the Attorney General's office during this biennial period, because of the present economical and financial conditions affecting all departments of the State and of the various municipalities, including cities and towns, school districts and counties.

Many questions have been presented which required diligent and thorough study. Consequently, the work of this office has been as arduous, if not more so than that in preceding administrations. Due to splendid cooperation of the assistants and office

force, the work generally has been dispatched with expediency and opinions rendered promptly after careful consideration.

During this term it has been the practice to hold weekly conferences with all assistants, at which times opinions to be rendered by the Attorney General were thoroughly discussed and only after careful consideration by the entire conference were opinions released. This system, I believe, should be continued for the reason that it promotes a better and more careful study of questions presented and consequently a more complete analysis of the matters under consideration.

The Attorney General primarily is the legal adviser to all state officials, state departments, boards, commissions and bureaus, and his duties are so defined by statute. Nevertheless, over a period of years, it has been the practice in the Attorney General's office to advise not only state officers and state departments, but county, city, town and school district officials as well, when such requests were made. We have continued to advise school districts, particularly when such requests were made through the State Superintendent of Public Instruction. Since, however, the statute provides that the district attorney is the legal adviser to all county officers, and since many towns and counties employ their own city and county attorneys, respectively, our position has been that these municipalities should seek advice from their own legal advisers, and only when such attorneys request the opinion of the Attorney General should the Attorney General pass upon questions presented from such officials. Where former opinions have been written covering the subject inquired about, copies of such opinions have been sent out.

Under the present arrangement, three of the Assistant Attorney Generals are paid out of appropriations of other departments. In order that the office may better function and have proper control over its assistants, the legislature should appropriate sufficient money to pay the salaries of all assistants. It is, therefore, recommended that all Assistant Attorney Generals in the future be paid from appropriations made for the Attorney General's office. It is further recommended that the Attorney General in the future be permitted to fix the salaries of all assistants rather than have the legislature designate the salary to be paid to each, for the reason that the Attorney General can secure better assistants and get better cooperation in general, if he is permitted to determine the salaries of the various assistants after he has had an opportunity to determine the ability and fitness of each.

No express authority is given by statute at the present time for the employment of any assistants, except the deputy attorney general, and while undoubtedly all appropriations in the past for assistants have been proper and necessary, nevertheless it

would be better to have a statute authorizing the Attorney General to employ necessary assistants.

INTERSTATE WATER RIGHTS

Probably of first importance among the various duties of the Attorney General is the handling of litigation pertaining to Colorado's water rights. The State, situated as it is upon the crest of the Continental Divide, is the headwaters for streams flowing both to the Gulf of Mexico and the Pacific Ocean. Ample moisture falls within our mountains, if properly protected, to supply the needs of our population. Neighboring states, to which the waters from our mountains flow, are constantly increasing their demands and perfecting rights which impose burdens upon our streams. Without ample water for domestic and irrigation purposes, we cannot hope to progress, and so it behooves us in every fair and reasonable way to preserve this natural resource. At the present time we are in litigation with the states of Wyoming and Kansas over the interstate waters of the Laramie and Arkansas Rivers. That litigation must be properly defended and the legislature should provide ample funds therefor.

At the present time we are negotiating for a compact with Wyoming and Nebraska for a division of the waters of the North Platte River, flowing out of North Park. Much effort and time has been spent in preparation for these negotiations and many conferences have been held with officials of both Wyoming and Nebraska. It is hoped that there may be a compact entered into with both Wyoming and Nebraska, or at least Wyoming, in the very near future. Ample funds should be appropriated for these purposes. The duty of negotiating compacts is primarily the duty of the Interstate Water Commissioner. However, the Attorney General and the State Engineer have been required to give much of their time to these matters, and as long as it is necessary they should continue to do so.

TAXATION AND PUBLIC EXPENDITURES

Because of the present world-wide depression many questions have arisen which call for opinions from this office in regard to matters affecting taxation and public expenditures. The more important opinions affecting these matters are set forth in full in this report. One or two of those opinions, perhaps, merit special mention.

Early during the year 1932, J. Arthur Phelps, District Attorney for the Tenth Judicial District, requested this office for an opinion regarding the application of school funds levied for current purposes to the payment of warrants issued but not paid in previous years. After careful consideration this office came to the conclusion that current public school revenues must be ap-

plied to the payment of current expenses, in the same manner that counties, cities, towns and the State are obliged to pay out their funds.

In October, 1931, the Attorney General gave a verbal opinion to the State Board of Equalization, sustaining the legality of that board's action providing for reducing assessed valuations on certain classes of property throughout the State of Colorado. The action of the State Board of Equalization was contested but sustained by our Supreme Court. That decision establishes the right of the State Board of Equalization to make reductions in assessed valuations as to classes of property and the manner in which it may be accomplished.

Most of the questions in regard to taxation and public expenditures presented to us grow out of the fact that counties and school districts are spending beyond their income, due to the fact that in most instances these municipalities find themselves on an appropriation basis, fixed and determined upon the ability to assess and collect taxes in more prosperous years. Assessed valuations have been lowered and taxpayers find it increasingly difficult to pay the taxes assessed against their property, with the result that revenues have been substantially decreased.

The Attorney General realized that because of these conditions, counties and school districts must universally find some method of reducing public expenditures. A committee was appointed to study county government for the purpose of determining, if possible, whether or not the legislature could assist in solving the situation. The committee appointed, after a careful study of this matter, has made a number of recommendations for the consideration of the present legislature. Their report has been presented to the Governor-elect, and it is hoped that the legislature may, by enacting into legislation some of the recommendations contained therein, help to relieve some of the difficulties now confronting the counties.

PUBLIC UTILITIES

Many questions have arisen during the term having to do with the regulation of public utilities. Participation in the 15% increase case took considerable work and much time upon the part of this office. Other railroad rate cases have arisen from time to time and it has been necessary to participate in practically all of these hearings before the Interstate Commerce Commission in order to properly protect the interests of this State.

The 1931 legislature passed certain acts providing for the regulation of common carriers using the highways of our State. Sufficient funds were not appropriated for the enforcement of these acts and it has become apparent that funds must be provided for this purpose.

The use of the highways by commercial carriers is a question

which should be given serious consideration by the legislature. Without proper regulation and the enforcement thereof the lives and property of persons using the highways are in constant danger, which is steadily increasing. The use of the highways by commercial carriers is not only increasing, but is also increasing the burden of upkeep, maintenance and construction of highways, which is not compensated for by the present license fees and gasoline tax. This applies both to State and county roads. The result is an ever-increasing burden upon the property of taxpayers. A committee was appointed by the Attorney General to gather information upon this question for the use of the legislature. This committee, however, to date has not been able to make any recommendations which may be presented to the legislature, but it is hoped that they may be able to do so in the very near future. At any rate the present legislature will no doubt give serious consideration to legislation affecting this situation.

LEGISLATIVE REFERENCE OFFICE

The Legislative Reference Office was established by an act of the General Assembly approved May 6, 1927. The major services of the office are threefold—Legislative reference work, bill drafting and revision of statutes.

This office has relieved the Attorney General's office proper of a considerable amount of work, particularly during the period that the legislature is in session.

Since the adjournment of the Twenty-eighth General Assembly, the office has steadily built up its library and files and endeavored in every way possible to anticipate the wants of the next session. Continuous study of the statutes for the purpose of revision and the elimination of repealed, unconstitutional, obsolete and contradictory provisions has been made. It is believed that several hundred pages of such statutes can be eliminated and a bill for that purpose will be introduced.

During 1932 it became apparent that a number of matters of grave concern to the State would call for legislative consideration at the coming session. Many of the problems involved were complicated in their nature, and it was deemed advisable by the Attorney General to attempt to get outstanding citizens of the State to study many of these problems, for the purpose of securing as much information as possible for the benefit of the legislature. Five committees were appointed by the Attorney General to make a study of the following subjects: Building and loan laws, health laws, school laws, county government laws and the use of the highways by commercial carriers. These committees have done excellent work, the members having served without remuneration. I desire to take this occasion to thank the members of these committees for their devoted interest to working out these complicated problems and for their splendid cooperation.

It is believed that much of the information gathered by these committees will be of invaluable assistance to the incoming legislature. Those assigned on these committees are as follows:

PUBLIC SCHOOL LAW COMMITTEE:

Carl Phil Schwalb — Clem W. Collins
Thomas A. Nixon — John P. Akolt
Stephen R. Curtis

COUNTY GOVERNMENT COMMITTEE:

David Strickler — Herbert S. Sands
Henry Van Schaack — Ferry Carpenter
Erl H. Ellis

HIGHWAY COMMERCIAL CARRIER COMMITTEE:

Fred Stover — Joseph Smith
Fred Farrar — Ray Lowell
R. G. Smith

HEALTH LAWS COMMITTEE:

Dr. Amos L. Beaghler — Dr. Frank B. Stephenson
Caldwell Martin — Newcomb Cleveland
Edward L. Wood

BUILDING AND LOAN COMMITTEE:

Bernard Seeman — W. M. Trant
Chas. J. Kelley — Paul Lee
Page Lawrence

It is not intended that the work of these committees in any manner interfere with the work of the legislature. The sole purpose thereof is to collect and secure information in order that the legislature may be better informed on these questions. These committees have studied the laws of other states and the application thereof to our own State in order to bring about better and more sound legislation, and to bring about greater efficiency and economy in government, as well as better protection to the public.

Because of the rapid changing of the political and economic picture, and the necessity for more careful study in advance of the meeting of the legislature, it is recommended that the legislature appoint interim committees to study certain questions in connection with the Legislative Reference Office, and that the legislature appoint a further committee with power to select other committees to deal with questions arising between sessions of the legislature. It is suggested that these committees consist of legislators, state officials or other persons and that they serve without pay and that an appropriation be made to the Legislative Reference Office to care for any necessary expenses incurred.

It is believed that by so doing that the Legislative Reference Office can be of vastly more service to the legislature and the State as a whole than it now is.

The appointment of interim legislative committees is not a new idea and it has proved to be of material benefit in many other states.

GASOLINE TAX

While every effort has been made to cooperate with the authorities throughout the State to curtail evasions of the payment of gasoline tax, nevertheless it is evident that there is a noticeable increase therein and much gasoline is being used in the State at the present time which does not pay the State and Federal tax. The legislature should amend the present gasoline law, either by making it clearly a refunding act or by doing away with refunds entirely. Refunds should be permitted in certain instances, if the taxing power of the State can be properly safeguarded by permitting such refunds. We believe that it can be properly safeguarded if all users of gasoline, regardless of whether they are municipalities or not are required to apply for such refunds under certain safeguards and severe penalties provided for any violation thereof.

BUILDING AND LOAN

The depression has brought to light many weaknesses in the laws of this State regulating building and loan associations.

The 1931 legislature made some advance in providing more regulations and more funds with which to make inspections. The resulting inspection, together with the financial stringency of the period, has disclosed some startling and unnecessary losses to our thrifty and saving people. In one community four associations are either in the hands of receivers or in process of voluntary liquidation. Each of the four was a "one-man organization" and had no active board of directors. Two of these men were convicted of rank defalcation and the other two committed suicide rather than face the courts. The losses suffered were far in excess of any loss which may be occasioned by depletion of the value of the security taken.

The total amount of savings which has been tied up in insolvent building and loan associations is in round figures $19,300,000, which is not only an unwarranted loss to the thousands of prudent citizens who saved as a protection against times like these but also substantially injured the general credit of building and loan associations as a whole. These losses in the main result directly from the lack of a complete and rational system of regulation by State authorities.

The Attorney General has rendered every possible assistance to the building and loan department of the State to curb such losses resulting from these unscrupulous manipulations, and to prosecute the necessary receiverships.

The building and loan law of 1897, providing the more important regulatory features of our present laws, was found to be

invalid because of a fatal error in the procedure of its adoption. The 1931 law has demonstrated itself to be clumsy and unworkable in many instances for the purposes intended.

When it became apparent to the Attorney General our building and loan statutes needed revision, a committee of experienced men was appointed to draft a new building and loan code for the consideration of this legislature to provide proper regulation for these institutions. The committee has prepared a splendid code. Some such legislation must be passed for the proper protection of the citizens of Colorado. The Attorney General urges and recommends the adoption of the proposed bill.

HIGHWAY MATTERS

Many problems for the Highway Department are disposed of each year. Litigation and disputes consequently arise over rights of way, as well as administrative legal questions. This work takes practically all the time of one assistant and is of such a nature that it demands considerable care and attention, since almost every dispute involves substantial sums of money.

SCHOOL MATTERS

Many important questions involving the school laws of our State have arisen during the last two years. Many of such questions, however, had to do with the raising or expending of school funds. Careful attention has been given to this work, since it is of the utmost importance not only to the schools but to the taxpaying public. The Attorney General is of the opinion that many of our school laws should be revised to meet present-day conditions; that under present laws our schools are costing more money than necessary and that it is possible to maintain the same standards of education with considerable less money than we are now expending. A committee appointed to study the present school laws of this State and compare them with the school laws of other states, has recommended, after careful study, that this State adopt a county unit system similar to that now in effect in Utah. Comparison between the two systems clearly shows that tremendous savings can be made by adopting such a county unit system.

PUBLIC SCHOOL LANDS AND FUNDS

One of the duties of this office is to examine titles to lands upon which loans are made from the Permanent School Fund and bond issues in which said fund is invested from time to time. Such examinations require not only considerable but very diligent and careful work in order to protect the interests of the State. It had been the practice for several years at the time the present Attorney General took office for assistants in this office handling this work to accept employment from brokers selling bonds to the State Land Board. In other words, the attorney of the State was passing upon his own work. As soon as this was discovered,

the practice was stopped. Anyone passing upon bond issues for the State of Colorado, whether it be for the investment of the permanent school fund or any other fund, should be in a position to clearly criticise such bond issues, and it is hoped that such practice will not be further permitted.

CRIMINAL CASES

The criminal appeals handled by this office before the Supreme Court as tabulated on the following pages represent a great deal of time and work in the preparation of briefs and abstracts.

WORKMEN'S COMPENSATION

The legal service rendered by this office to the Industrial Commission is not only voluminous but requires attention at all times. Much success in this branch of the work is reflected in the cases tabulated in this report.

INHERITANCE TAX DEPARTMENT

Through this department there has been collected during the period from December 1, 1930, to December 1, 1932, the total sum of $1,226,276.26. The expense of this department for the same period amounts to the sum of $45,178.60, which is substantially less than the expense has been for any other two-year period since the enactment of the Inheritance Tax Act of 1921. This expense total is exclusive of any incidental expenses for the last month, for which bills may not yet have been presented.

The appropriation made by the last General Assembly for the expense of the Inheritance Tax Department, exclusive of salaries, for the biennial period from June 30, 1931, to July 1, 1933, was $25,000. Of this appropriation $9,042.57 has been expended during the seventeen months from June 30, 1931, to December 1, 1932, exclusive of any incidental expenses for the last month.

The refunds of taxes made under order of court for the period from December 1, 1930, to December 1, 1932, amount to $7,466.80.

The collections for the period from December 1, 1930, to December 1, 1932, may be tabulated as follows:

Number of Treasurer's receipts issued on estates examined, being receipts numbered 51967 to 58208, both inclusive	6,241
Receipts issued on estates paying tax	894
Receipts issued on estates paying $1.00 waiver fee	3,059
Receipts issued on estates paying $3.00 waiver fee	772
Receipts issued on estates paying $5.00 waiver fee	1,153
Receipts issued on estates paying $10.00 waiver fee	317
Receipts issued on estates paying additional fees	46
Number of estates paying $10.00 examination fee, these being included in certain of the above mentioned receipts	817

Attached hereto is a graphic comparison of inheritance taxes collected in each of the sixteen biennial periods since the first inheritance tax law went into effect.

It will be noted that the collections for the last biennial period are substantially less than for any period since 1920 and 1921. This reduction is undoubtedly due in a large measure to the present financial depression and the consequent shrinkage in the value of estates, and should be taken into consideration by the present legislature in estimating revenues for the next biennial period, since it is not likely that there will be any material increase in this source of revenue for the next two years, but, on the other hand, there is every reason to believe a decrease should be anticipated.

HEALTH LAWS

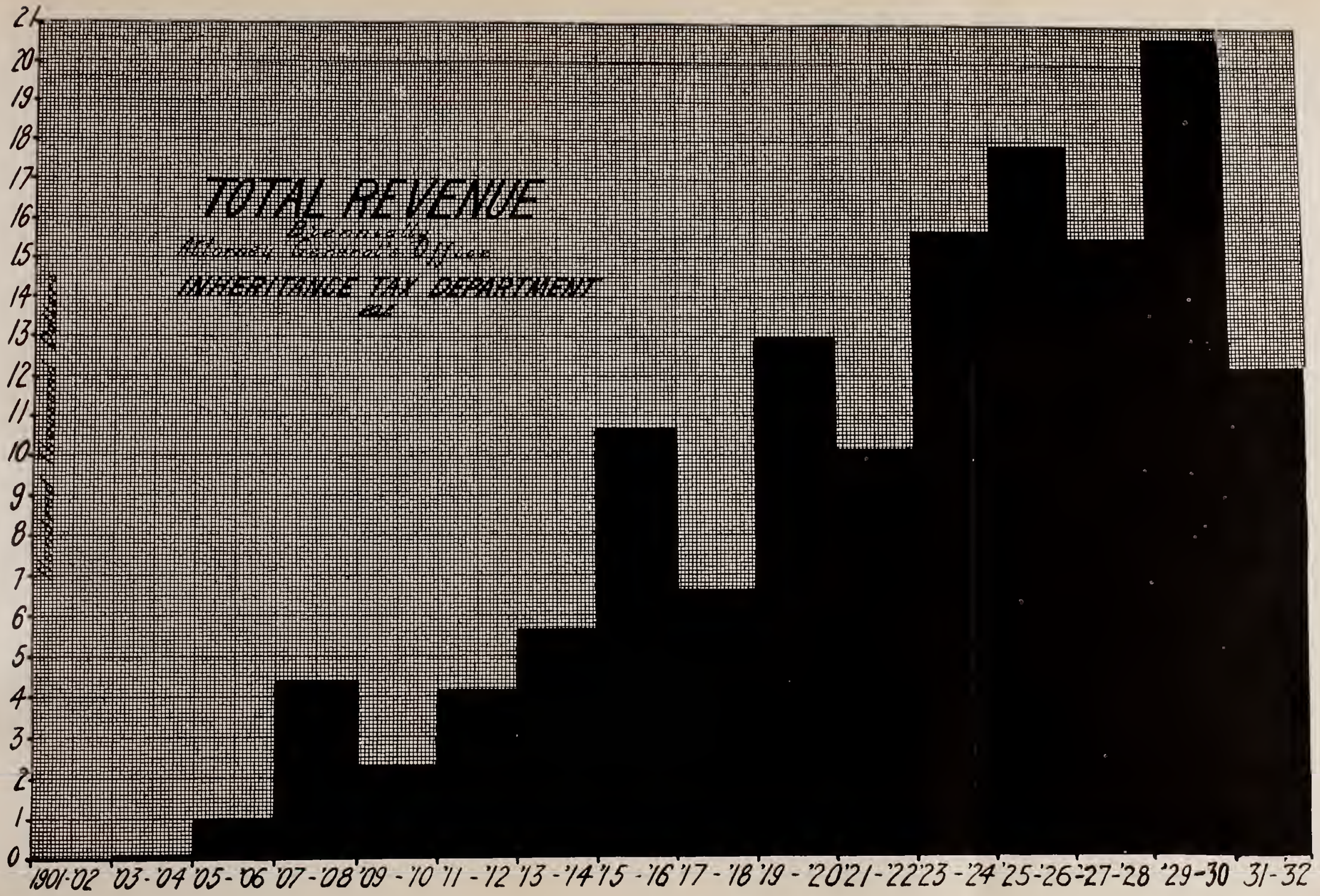
The health laws of the State of Colorado are extremely antiquated and are not at all designed to meet the needs of this State. There are many conflicts between powers of State and local officials, as well as between State officials. We need an entirely new health code for the State of Colorado. A committee was appointed to study this situation and their study, based upon a report made in 1931 by Dr. C. E. Waller, Surgeon of the United States Public Health Service, has resulted in the drafting of a health code bill to be presented to the present legislature for their consideration. Dr. Waller, in his report, made some 35 recommendations for the improvement of our health laws, many of which have been incorporated in the bill prepared by the committee appointed by the Attorney General. If this bill is adopted by the legislature, many of the health administration problems now facing Colorado should be largely eliminated.

CONCLUSION

I desire to extend my sincere thanks to the heads of all departments, commissions and bureaus of the State of Colorado, whose work has brought them in contact with this office, for their hearty cooperation and assistance. To my deputy and assistants, who have so loyally and faithfully worked with me during this term, I express my sincere thanks and hearty appreciation for their cooperation and loyal assistance.

Respectfully submitted,

CLARENCE L. IRELAND,
Attorney General.


TOTAL REVENUE
Received by
Attorney General's Office
INHERITANCE TAX DEPARTMENT
of
Millions of Dollars
0
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'05-'06
'07-'08
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'19-'20
'21-'22
'23-'24
'25-'26
'27-'28
'29-30
31-'32

SCHEDULE II

LIST OF ALL PENDING AND DISPOSED OF CASES, IN ALL COURTS 1931-1932

CASES IN THE SUPREME COURT OF THE UNITED STATES

No. 15. Original. October term, 1927. State of Colorado v. State of Kansas, et al.

Original proceeding to determine rights of the parties to water in the Arkansas River. Evidence being taken as and when commissioner directs. Pending.

No. 19. October term, 1930. State of Arizona v. California, Nevada, New Mexico, Colorado, Utah, Wyoming and Ray Lyman Wilbur, Secretary of Interior.

Suit for interpretation of Colorado River compact and construction of Boulder Dam. Dismissed May 18, 1931.

No. 20. October term, 1930. State of Wyoming v. State of Colorado.

Interpret construction of former Wyoming-Colorado decree to enjoin use of waters of Laramie River. Pending.

No. 618. October term, 1930. The United States of America, ex rel. Ethel M. McLennan v. Ray Lyman Wilbur, Secretary of the Interior.

Appeal from a decision of the Court of Appeals of the District of Columbia, case No. 5247, Special Calendar, October term, 1930, sustaining an order of the Secretary of Interior, relating to permits to prospect for oil and gas on the public domain. Affirmed May 18, 1931.

No. 19. October term, 1931. State of Colorado v. J. Foster Symes, Judge of the District Court of United States, for the District of Colorado.

Mandamus action to have the case of Henry Dierks remanded to the State Courts. Sustained, with leave to Dierks to amend his petition to the United States District Court.

No. 99. October term, 1931. William Driscoll and Thomas Driscoll v. State of Colorado, and Texas Production Company.

Application for Writ of Certiorari to review decision in Driscoll, et al. v. State, 88 Colo. 390. Denied October 12, 1931.

No. 499. October term, 1932. Moffat Tunnel League v. Interstate Commerce Commission, et al.

Action to review judgment of United States District Court (Del.) case No. B-9412, which sustained an order of the I. C. C. (case No. 8070), granting the D. & R. G. Ry. Co. the right to secure control of the Moffat Road by stock purchase. Pending.

CASES IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5247. Special Calendar. October term, 1930. Ray Lyman Wilbur, Secretary of the Interior v. U. S. of America, ex rel. Ethel M. McLellan.

Appeal from order of Secretary of Interior, relating to permits to prospect for oil and gas on the public domain. Order sustained, and case appealed to United States Supreme Court, case No. 618, October term, 1930.

CASES IN THE UNITED STATES DISTRICT COURT

No. 8718. Union Pacific Railroad Company v. Board of County Commissioners of Weld County.

Action to recover taxes paid under protest. Demurrer of defendant sustained. Appealed to the United States Circuit Court of Appeals, No. 96, where judgment was reversed and cause remanded to the United States District Court. Petition for rehearing there denied. Writ of Certiorari to United States Supreme Court, No. 639, denied. Thereupon answer filed in United States District Court, where judgment for railroad company was entered on motion for judgment on pleadings, Sept. 17, 1930. Appeal from such judgment to the United States Circuit Court of Appeals, dismissed and judgment satisfied.

No. 8767. Atchison, Topeka and Santa Fe Ry. Co. v. Board of County Commissioners of the County of Prowers.

Action to recover taxes paid under protest. Demurrer of defendant sustained. Appealed to the United States Circuit Court of Appeals, No. 123, where judgment was reversed and cause remanded to the United States District Court. Petition for rehearing there denied. Writ of Certiorari to United States Supreme Court, No. 640, denied. Thereupon answer filed in the United States District Court, where judgment for railroad company was entered on motion for judgment on pleadings, September 17, 1930. Appeal from such judgment to the United States Circuit Court of Appeals dismissed and judgment satisfied.

THE FOLLOWING CASES, WHICH WERE PENDING THE OUTCOME OF CASES NOS. 8718 AND 8767, HAVE BEEN SETTLED:

No. 8719. Atchison, Topeka & Santa Fe Ry. Co. v. Otero County.

No. 8720. Atchison, Topeka & Santa Fe. Ry. Co. v. Bent County.

No. 855. In the matter of the Associated Fruit Company (bankrupt).

Claim of State Director of Markets for inspection fees. Claim disallowed. No appeal.

No. 9623. Bankers National Life Ins. Co. v. Cochrane, et al.

Mandamus action to secure release of securities. Judgment for plaintiff.

No. B-9412. Equity (Delaware). Moffat Tunnel League v. Interstate Commerce Commission, et al.

Action to review findings and order of I. C. C. authorizing D. & R. G. to secure control of Moffat Road by stock purchase. Order of I. C. C. upheld and case dismissed. Appealed to United States Supreme Court (No. 499), October term, 1932.

No. 52527 (N. Y.). In the matter of Kountze Brothers, et al (bankrupts).

Claim of State of Colorado for money on deposit for payment of bond interest. Pending.

TRANSCRIPT OF DOCKET CASES BEFORE INTERSTATE COMMERCE COMMISSION

17000. Rate structure investigation. Part 2. Western Trunk Line Class Rates. Ex Parte No. 87. Sub. 1. Class Rates within Western Trunk Line territory. Attorney for Commission attended hearings at Chicago and Denver, and presented evidence at Denver. Pending.

17000. Part 9. Rate structure investigation. Livestock. Western District rates. Attorney for Commission attended hearings at Salt Lake City, Kansas City and Chicago. Pending.

17000. Part 7. Rate structure investigation. Grain and grain products within western district and for export. Attorney for Commission attended hearings at Dallas, Texas, and Chicago, Illinois. Pending.

13535 and 17166. Petition filed on behalf of Commission to institute investigation of rates on potatoes in cases numbered above and that effective dates of prior orders be postponed. Pending.

No. 8070. Application of Denver & Rio Grande Western Ry. for an order authorizing the acquisition of D. & S. L. Ry. (Moffat Road). Order granted.

Appealed to United States District Court (Delaware), No. B-9412, where the order of the I. C. C. was upheld. Appeal from

order of United States District Court to the United States Supreme Court (No. 499, October term, 1932), now pending.

No. 8670. Application of Colorado & Southern Ry. to abandon part of its line of railroad. Granted.

No. 9556. Application of W. C. Johnston, et al., for leave to acquire the South Park Railway. Pending.

No. 9582. Application of the Denver, Leadville and Alma Railroad Company for certain operation rights; and for the acquisition by Victor A. Miller of a line of railway between Sheridan Junction and Leadville. Pending.

CASES IN THE SUPREME COURT OF COLORADO

No. 12417. Driscoll, et al. v. State.

Writ of Error to the District Court of Routt County which denied injunction to restrain oil lease on state land. Judgment affirmed March 2, 1931.

No. 12507. Board of County Commissioners of Boulder County v. Union Pacific Railroad Company.

Tax assessment case. Judgment affirmed May 18, 1931.

No. 12562. People v. M. B. Swena (P. U. C.).

Money demand. Appeal from judgment for defendant. Denver District Court No. 105046. Affirmed February 9, 1931.

No. 12574. People v. Miller.

Oil Tax Case. Reversed February 8, 1932.

No. 12624. People v. County Commissioners of Weld County.

Suit for collection of oil tax. Affirmed in part and reversed in part May 2, 1932.

No. 12627. People v. Stanley.

Appeal by the people from a judgment for the defendant to test the constitutionality of the melon inspection act. Affirmed February 29, 1932.

No. 12661. Civil Service Commission v. The People ex rel. Beates.

Re certification of classified civil service. Reversed January 26, 1931.

No. 12666. State Board of Dental Examiners v. B. G. Savelle.

Writ of Error, Denver District Court, No. 107296. Appeal dismissed on October 10, 1932.

No. 12667. State Board of Dental Examiners v. A. W. Heitler.

Writ of Error, Denver District Court, No. 107297. Judgment modified on January 18, 1932, and case remanded with instructions.

No. 12668. State Board of Dental Examiners v. John H. Miller.

Writ of Error, Denver District Court, No. 107299. Appeal dismissed on October 10, 1932.

No. 12669. State Board of Dental Examiners v. Charles W. Patch.

Writ of Error, Denver District Court, No. 107298. Judgment reversed on January 18, 1932, and case remanded with instructions.

No. 12670. State Board of Dental Examiners v. Joseph R. Walsh.

Writ of Error, Denver District Court, No. 107295. Judgment reversed on January 18, 1932, and case remanded with instructions.

No. 12671. State Land Board v. Limon National Bank.

Action by bank to recover $1,669.20 from State Land Board, under declaratory judgment statute. Judgment reversed February 24, 1931.

No. 12690. People v. City and County of Denver.

Collection of oil tax. Judgment affirmed in part, and reversed in part, on May 2, 1932.

No. 12704. County Commissioners v. Lavington.

Suit for refund of taxes. Error to the District Court of Washington County. Judgment reversed September 12, 1932.

No. 12711. Board of Livestock Commissioners v. Esser.

Dispute over value of livestock sold by livestock board as estrays. Judgment against board affirmed October 24, 1932. Judgment satisfied.

No. 12735. Eastenes v. Adams, et al.

Appeal from judgment of Weld County District Court, No. 7549, dismissing complaint. Pending.

No. 12736. Hinderlider, et al. v. Everett, et al.

Writ of Error to judgment of the Chaffee County District Court restraining supervision of the upper Arkansas. Pending.

No. 12746. Katherine L. Craig v. People, ex rel. Hazzard, et al.

Writ of Error to District Court of Adams County (No. 2856). Constitutionality of Sec. 1, Ch. 159, S. L. 1929, upheld, and case remanded for further hearing.

No. 12796. The La Plata River and Cherry Creek Ditch Company v. M. C. Hinderlider, et al.

Action involving use of water. Pending.

No. 12817. Bordner v. County Commissioners.

Action to review order of the District Court of Baca County, in sustaining demurrer to complaint. Pending.

No. 12906. Burbridge v. Public Utilities Commission.

Writ of Error to order of the District Court of the City and County of Denver (No. 109772), sustaining findings of Public Utilities Commission (November 17, 1930). Judgment reversed May 23, 1932.

No. 12920. Trustees State Normal School v. Wightman.

Money demand on salary depending on whether contract existed for employment. Writ of Error to the District Court of Gunnison County, which awarded judgment for plaintiff. Pending.

No. 12949. Colorado Tax Commission v. Colorado Central Power Company.

Action for refund of taxes. Writ of Error to the District Court of Jefferson County, which entered judgment for plaintiff. Pending.

No. 12959. Colorado Tax Commission v. Denver Bible Institute.

Action for recovery of taxes. Error to District Court of Adams County, which entered judgment for defendant in error. Pending.

No. 12962. Colorado Tax Commission v. Midland Terminal Railway Company.

Action for refund of taxes. Writ of Error to District Court of El Paso County, which reduced assessed valuation of railroad to $490,000. Pending.

No. 12963. Colorado Tax Commission v. Midland Terminal Railway Company.

Action for refund of taxes. Writ of Error to District Court of Teller County, which reduced assessed valuation of railroad to $490,000. Pending.

No. 12982. People ex rel. Clarence L. Ireland v. District Court.
Action for Writ of Prohibition. Denied.

No. 12983. People ex rel. Wm. H. Adams v. District Court.
Action for Writ of Prohibition. Denied.

No. 12984. People ex rel. Clarence L. Ireland v. District Court.
Action for Writ of Prohibition. Denied.

No. 12990. Colorado Tax Commission v. Colorado Central Power Company.

Action to recover taxes. Error to District Court of Arapahoe County, which entered judgment for plaintiff. Pending. Consolidated with case No. 12949.

No. 12991. Colorado Tax Commission v. Colorado Central Power Company.

Action to recover taxes. Error to District Court of Weld County, which entered judgment for plaintiff. Pending. Consolidated with case No. 12949.

No. 12992. MacGinnis et al. v. Denver Land Company.

Action to enjoin enforcement of resolution of State Board of Equalization reducing assessed valuation of property for purpose of taxation. Error to order of District Court of City and County of Denver, granting injunction. Judgment reversed December 19, 1931.

No. 12993. Adams et al. v. Denver.

Action to enjoin enforcement of resolution referred to in case No. 12992. Error to order of District Court of City and County of Denver, granting injunction. Judgment reversed December 19, 1931.

No. 12994. MacGinnis et al. v. Hudson.

Action to enjoin enforcement of resolution referred to in case No. 12992. Error to order of District Court of City and County of Denver, granting injunction. Judgment reversed December 19, 1931.

No. 13000. Gregory v. Colorado National Bank, et al.

Contest of will of Rachel M. Schleier, involving bequest for public use. Will admitted to probate. Judgment affirmed July 5, 1932.

No. 13001. Robinson, et al. v. Armstrong, et al.

Mandamus action to review findings of Secretary of State relative to referring of Blue Sky Law. Error to order of District Court of City and County of Denver, dismissing case. Judgment affirmed March 11, 1932.

No. 13017. County Commissioners Adams County v. Pillar of Fire.

Action relating to tax exemption. Error to judgment of District Court of Adams County, in favor of plaintiff. Pending.

No. 13024. Parry & Jones v. Board of Corrections.

Action involving judgment on arbitrators award. Error to action of District Court of Pueblo County, in setting aside judgment. Pending.

No. 13078. Driverless Car Co., et al. v. Secretary of State.

Action to enjoin Secretary of State from enforcing 1931 Motor Vehicle Act, relating to public liability insurance. Error to order of District Court of City and County of Denver, denying injunction. Judgment affirmed Sept. 19, 1932.

No. 13109. San Luis Power & Water Co. v. Fred Trujillo, as Treasurer of the County of Costilla.

Writ of Error to the District Court of Costilla County, which entered judgment in favor of defendant in error for back taxes. Pending.

No. 13126. People v. Home Oil and Supply Company.

Action for collection of 4-cent gasoline tax. Error to judgment of District Court of City and County of Denver, in favor of defendant. Pending.

No. 13133. Schwilke v. People.

Error to judgment of the District Court of the City and County of Denver, finding plaintiff in error guilty of contempt for violating injunction order. Pending.

No. 13148. Denver & Rio Grande Western Ry. Co. v. People.

Action to review decision of P. U. C. relative to rates on livestock. Error to District Court of City and County of Denver, which entered judgment for defendant in error. Pending.

No. 13166. People, ex rel. v. Lory, et al.

Suit on teachers contract. Pending.

No. 13178. People v. Montgomery.

Action to restrain illegal operation of motor vehicle. Error to order of District Court of Boulder County, denying injunction. Pending.

No. 13180. Soldiers & Sailors Home v. Fannie McManis Hermann.

Action to set aside order of final settlement and distribution in the matter of the estate of William McManis, deceased. Error to order of County Court of Rio Grande County, overruling demurrer. Pending.

No. 13207. P. U. C. v. Town of Erie.

Action to review order of P. U. C. authorizing abandonment of station agency at Erie. Error to order of the District Court of Boulder County (case No. 9280), vacating order of P. U. C. Pending.

CRIMINAL CASES IN THE SUPREME COURT OF COLORADO

No.	Title	Crime
12576	Funk et al. v. People	Robbery with Gun
12651	Kolkman v. People	Grand Larceny
12673	Lord v. People	Juvenile Delinquency
12684	Walker, Ray and Hallady v. People	Murder
12685	Wolfe v. People	Gambling
12689	Copp v. People	Second Violation Liquor Law
12694	Lackey et al. v. People	Possession of Still
12726	Crane and Flynn v. People	Conspiracy to Obtain Money by False Pretenses
12750	Arnett and Arnett v. People	Confidence Game
12795	Iwerks v. People	Violation of Game and Fish Laws
12797	Milow v. People	Rape
12798	Leighton and Scott v. People	Criminal Libel
12834	Abbott v. People	Statutory Rape
12835	Ingles v. People	Murder
12843	Giannatti v. People	Operation of Still
12846	Matthews v. People	Murder
12849	Gould v. People	Murder
12850	Ziemer v. People	Neglect of Minor Children
12852	O'Loughlin v. People	Murder
12854	Boyles v. People	Second Degree Murder
12863	Hopkins v. People	Embezzlement
12864	Holt v. People	Operation of Still
12871	Compton v. People	Larceny as Bailee
12917	Stonebraker v. People	Perjury
12945	Farmer v. People	Murder
12966	Brownell v. People	Violation of Prohibition Law
12967	Albert et al. v. People	Robbery
12986	Sharp v. People	Contributing to Juvenile Delinquency
12989	Updike v. People	False Pretenses
13019	Maestas v. People	Murder
13034	Carlson v. People	Murder
13054	Abbott v. People	Statutory Rape
13055	Bearman v. People	Criminal Libel
13067	Drinkgern and Schnell v. People	Violation of State Banking Laws
13108	Bushnell v. People	Violation Motor Vehicle Laws
13117	Andreen v. People	Larceny
13130	Mukuri et al. v. People	Conspiracy to Commit Arson
13135	Ingles v. People	Murder
13140	Ludlow v. People	Violation Motor Vehicle Laws
13141	Kimble v. People	Violation Motor Vehicle Laws
13161	Moss v. People	Murder
13174	Cole et al. v. People	Violation of State Banking Laws
13190	Dill v. People	Confidence Game and Swindling
13201	Collins v. People	Criminal Contempt
13224	Sharer v. People	Forgery
13231	Miller v. People	Cattle Stealing

CRIMINAL CASES IN THE SUPREME COURT OF COLORADO

Supersedeas	Disposition
No Application	Reversed Jan. 11, 1932
Allowed	Affirmed May 11, 1931
Allowed	Pending
Allowed	Affirmed Jan. 5, 1931
Allowed	Affirmed Dec. 21, 1931
Withdrawn	Case abandoned by plaintiff in error
Denied	Dismissed for failure to prosecute March 20, 1931
Denied	Affirmed May 2, 1932
No application	Affirmed April 25, 1932
Reversed on supersedeas	April 20, 1931
Affirmed on supersedeas	Oct. 5, 1931
Denied	Reversed Dec. 21, 1931
Reversed on supersedeas	May 18, 1931
.....	Reversed Dec. 7, 1931
Allowed	Affirmed May 18, 1931
Allowed	Reversed Sept. 21, 1931
.....	Affirmed Nov. 9, 1931
.....	Reversed June 22, 1931
Affirmed on supersedeas	Feb. 8, 1932
No application	Affirmed Nov. 30, 1931
Denied	Affirmed June 29, 1931
.....	Affirmed July 6, 1931
Affirmed on supersedeas	Sept. 8, 1931
Reversed on supersedeas	Nov. 1, 1931
No application	Affirmed Feb. 1, 1932
Denied	Dismissed for failure to prosecute March 3, 1932
Affirmed on supersedeas	Jan. 25, 1932
Affirmed on supersedeas	March 7, 1932
Granted	Pending
No application	Affirmed May 2, 1932
No application	Reversed Oct. 3, 1932
Denied	Reversed Nov. 28, 1932
Affirmed on application for supersedeas	Oct. 31, 1932
Allowed	Pending
Allowed	Pending
Denied	Affirmed Sept. 19, 1932
No application	Pending
No application	Pending
.....	Pending outcome of Case No. 13108
.....	Pending outcome of Case No. 13108
No application	Pending
.....	Pending
Granted	Pending
.....	Pending
.....	Pending
.....	Pending

DISBARMENT CASES IN THE SUPREME COURT OF COLORADO

No. 12652. The People ex rel. v. Allen E. Warren.
Order of disbarment entered May 31, 1932.

No. 12745. The People ex rel. v. Sam Nikkel.
Petition dismissed without prejudice May 18, 1931.

No. 12765. The People ex rel. v. Guy C. Cowen.
Order of disbarment entered April 20, 1931.

No. 12948. The People ex rel. v. Harry M. Kaufman.
Order of disbarment entered November 16, 1931.

CONTEMPT CASES IN THE SUPREME COURT OF COLORADO

No. 13050. People ex rel. v. Joseph Thierry.
Contempt proceeding, arising out of Kelly disbarment proceeding. Adjudged guilty Dec. 12, 1932.

No. 13051. People ex rel. v. Maude Armstrong.
Contempt proceeding, arising out of Kelly disbarment proceeding. Petition dismissed.

No. 13049. People ex rel. v. Ludwig Thompson.
Contempt proceeding, arising out of Kelly disbarment proceeding. Adjudged guilty Dec. 12, 1932.

WORKMEN'S COMPENSATION CASES IN THE SUPREME COURT OF COLORADO

No.	Title of Cause	Judgment of Lower Court	Status
12760	Grimm v. U. S. Fidelity & Guaranty Co. et al	Award Reversed	Judgment Modified and Affirmed March 30, 1931
12769	Colorado Fuel & Iron Co. v. Industrial Commission	Award Affirmed	Judgment Reversed April 20, 1931
12788	Charles Mantor v. Industrial Commission of Colorado, The Stearns-Rogers Manufacturing Co., and London Guarantee & Accident Co., Ltd.	Award Affirmed	Judgment Affirmed May 11, 1931
12813	Industrial Commission, et al. v. W. I. Pappas	Award Vacated	Judgment Affirmed July 27, 1931
12837	The Employers Mutual Insurance Co. et al. v. Industrial Commission et al.	Award Affirmed	Judgment Reversed with Instructions
12867	Helen Tripp v. Industrial Commission	Award Affirmed	Judgment Affirmed October 13, 1931

No.	Title of Cause	Judgment of Lower Court	Status
12883	The State Compensation Insurance Fund v. Industrial Commission, Frances E. Kelso, et al.	Award Affirmed	Judgment Affirmed September 21, 1931
12886	Public Service Co. v. Industrial Commission, Nellie Tittes, et al.	Award Affirmed	Judgment Affirmed September 28, 1931
12890	LaFayette Ryan v. The Industrial Commission, et al.	Award Affirmed	Judgment Reversed September 14, 1931
12891	Industrial Commission and Victor American Fuel Co. v. Richard O. Lockard	Award Vacated	Judgment Modified and Affirmed
12969	Cresson Consolidated Gold Mining & Milling Co. et al. v. Industrial Commission, et al.	Award Affirmed	Judgment Reversed March 7, 1932
12972	C. E. Wells, et al. v. Mildred Cutler	Award Affirmed	Judgment Affirmed December 21, 1931
12976	The C. F. & I. Co. v. Industrial Commission, Johanna Kambie	Award Affirmed	Judgment Reversed February 29, 1932
13003	Industrial Commission, et al. v. Roper	Award Vacated	Judgment Modified and Affirmed June 1, 1932
13010	North Park Coal Company, et al. v. The Industrial Commission and Tony Sandos	Award Affirmed	Judgment Reversed April 4, 1932
13013	John Duras v. Industrial Commission, The Manhattan Restaurant Co. et al.	Award Affirmed	Judgment Reversed April 25, 1932
13016	Industrial Commission and Victor American Fuel Co. v. Richard O. Lockard	Award Vacated	Judgment Reversed and Remanded February 29, 1932
13025	The Hayden Brothers Coal Corp. et al. v. The Industrial Commission and Teofie Uzenki	Award Affirmed	Judgment Reversed April 4, 1932
13096	Richard O. Lockard v. Industrial Commission and Victor American Fuel Co.	Award Affirmed	Judgment Affirmed June 20, 1932
13097	U. S. Fidelity & Guaranty Co. et al. v. The Industrial Commission and Dewey Cobb	Award Affirmed	Judgment Affirmed June 6, 1932
13127	Mary E. Lawrence, et al. v. Industrial Commission, Armour & Company, et al.	Award Affirmed	Motion to Dismiss Writ of Error Granted July 5, 1932
13143	The Empire Fire Co. v. The Industrial Commission and Malcolm Mat Harrie	Award Affirmed	Judgment Affirmed September 12, 1932
13156	The Home Insurance Company, et al. v. Margaret Mae Hepp, et al.	Award Vacated	Judgment Affirmed October 31, 1932
13163	The H. C. Lallier Construction & Engineering Co. et al. v. The Industrial Commission and Mrs. Nellie Beaman	Award Affirmed	Judgment Reversed December 12, 1932

CASES IN THE DISTRICT COURTS

Adams County

No. 2856. People ex rel. Hazzard, et al. v. Craig.

Mandamus to compel distribution of school income fund. November, 1930, judgment sustaining demurrer, appealed to the Supreme Court (No. 12746). In the Supreme Court the constitutionality of Ch. 159, Sec. 1, S. L. 1929, was upheld, and the case remanded to the District Court, where a compromise was effected and case dismissed.

No. 2873. Pillar of Fire v. Board of County Commissioners.

Action relating to tax exemption. Judgment for plaintiff. Appealed to Supreme Court (No. 13017).

U. P. Ry. Co. v. County Commissioners of Adams County.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

Arapahoe County

Colorado Central Power Co. v. Colorado Tax Commission.

Action for refund of taxes. Judgment for plaintiff. Appealed to Supreme Court (No. 12949).

Board of County Commissioners v. D. E. Trogler, Public Trustee, et al.

Condemnation proceeding. Pending.

No. 2797. Colorado Central Power Co. v. County Commissioners.

Action for recovery of taxes. Pending outcome of Case No. 12949, in Supreme Court.

People v. Dunn, et al.

Action on bond in matter of escheat estate of Peter Franzen. Pending.

People v. Cartwright, et al.

Action on bond in matter of escheat estate of Peter Franzen. Pending.

No. 2339. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of Arapahoe County.

Suit to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8767 in the U. S. District Court.

Union Pacific Railroad Co. v. County Commissioners of Arapahoe County.

Action to recover excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

Archuleta County

People ex rel, State Highway Department v. Graves.

Prosecution for obtaining money by false pretenses. This office has been asked to assist the District Attorney.

Boulder County

No. 8704. People v. Zener.

Action to recover gasoline tax and penalty. Settled and case dismissed.

No. 8705. People v. Clark.

Action to recover gasoline tax and penalty. Settlement made and case dismissed.

No. 8799. U. P. Ry. Co. v. County Commissioners of Boulder County.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

No. 9041. Boulder National Bank v. Boulder County.

Action for refund of taxes. Dismissed on motion of defendant.

Chaffee County

No. 3147. Reorganized Catlin Consolidated Canal Co. v. Hinderlider, et al.

Action to enjoin use of water. Hinderlider nominal defendant. No action to be taken by this office.

Cheyenne County

Union Pacific Railroad Co. v. County Commissioners of Cheyenne County.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

Clear Creek County

E. M. Patrick v. Board of County Commissioners.

Action to recover taxes. Pending.

State Highway Department v. Millard Oil Co.

Condemnation proceeding for right of way. Judgment for petitioners. Pending, subject to jury award.

Costilla County

No. 948. Fred Trujillo, as Treasurer v. San Luis Power & Water Co.

Action to recover taxes omitted in former years. Judgment for plaintiff, March 22, 1931. Appealed to Supreme Court (No. 13109).

Martinez v. Civil Service Commission.

Mandamus action to review action of civil service commission in dismissing water commissioner. Case dismissed.

Delta County

People ex rel. Park Reservoir v. Hinderlider, et al.

Mandamus action relating to use of water. Pending on demurrer.

Denver County

Union Pacific Railroad Company v. City and County of Denver.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

Atchison & Santa Fe Railway Co. v. City and County of Denver.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8767 in the U. S. District Court.

Filer v. Land Board.

Suit for declaratory judgment. Dismissed.

No. 30665. Walker, et al. v. Board of Control of the State Home for Dependent Children, et al.

Application for Writ of Habeas Corpus. Denied February 7, 1931.

No. 30912. Nillson, et al. v. Superintendent State Home for Dependent Children.

Petition for Writ of Habeas Corpus to release child from State Home. Writ denied.

No. 31070. Harder, et al. v. State Home for Dependent Children.

Application for Writ of Habeas Corpus to secure custody of child committed to State Home. Granted.

No. 31408. In the Matter of The Petition of Orangel Helton for a Writ of Habeas Corpus.

Pending.

No. 106262. J. C. Johnson v. State Normal School (Western State College).

Defendants' demurrer overruled. Settled.

No. 106996. Lawrence v. Davidson, et al.

Suit to quiet title. Pending.

No. 107363. C. P. Link v. Civil Service Commission.

Mandamus for reinstatement to office. Settled.

No. 110717. Sam Bernstein v. State of Colorado, et al.

Suit for money. Pending.

No. 111619. People v. D. W. Wills, et al.

Suit by State Land Board to collect rent. Case dismissed.

No. 111783. Industrial Commission v. Employer's Liability Assurance Corporation.

Action to recover penalty. Settled May 5, 1931.

No. 111788. Industrial Commission v. Employer's Liability Assurance Corporation.

Action to recover penalty. Settled May 5, 1931.

No. A. 17. Vaughn v. Newlon.

Action in damages for dispossession. Judgment for defendant. Case closed.

No. A. 751. Bowles v. Land Board.

Suit for declaratory judgment. Judgment for defendants.

No. A. 1122. In the Matter of the Protest against Referendum Petitions to Refer Senate Bill No. 180, entitled "An Act Relating to Fraudulent Practices."

Motion to dismiss, sustained.

No. A. 1324. People v. City of Aspen.

Action to collect on defaulted bonds and interest. Judgment for $3973.75 for plaintiff.

No. A. 1359. Murphy v. Federal Building & Loan Association, et al.

Money demand. Pending.

No. A. 1384. People ex rel. Robinson, et al. v. Secretary of State.

Mandamus action to review findings of Secretary of State relative to referring of Blue Sky Law. Dismissed with prejudice. Appealed to Supreme Court (No. 13001), where judgment of dismissal was affirmed.

No. A. 1410. People v. Merritt.

Action to recover gas tax. Judgment for plaintiff.

No. A. 1718. Derby Oil Company v. State Oil Inspector.

Injunction to restrain Oil Inspector from enforcing provisions of 1931 act. Injunction granted.

No. A. 1843. Denver Land Company v. MacGinnis, et al.

Action to enjoin enforcement of resolution of State Board of Equalization reducing assessed valuation of property for purpose of taxation. Injunction granted. Appealed to Supreme Court (90 Colo. 72), where the judgment was reversed.

No. A. 1870. Denver v. Wm. H. Adams, et al.

Action to enjoin enforcement of resolution of Board of Equalization, referred to in Case No. A. 1843. Injunction granted. Appealed to Supreme Court (90 Colo. 81), where judgment was reversed.

No. A. 1872. Hudson v. MacGinnis, et al.

Action to enjoin enforcement of resolution of State Board of Equalization referred to in Case No. A. 1843. Injunction granted. Appealed to Supreme Court (90 Colo. 82), where the judgment was reversed.

No. A. 2156. Pacific Life Insurance Company, et al. v. Insurance Commissioner.

Action involving withdrawal of securities. Judgment in favor of plaintiffs. Appealed to Supreme Court (No. 13069).

No. A. 2434. Crawford v. Civil Service Commission.

Mandamus action to review order of dismissal of Civil Service Commission. Judgment for defendants.

No. A. 2601. Driverless Car Co. et al. v. Secretary of State.

Action to enjoin Secretary of State from enforcing 1931 Motor Vehicle Act, relating to public liability insurance. Denied. Appealed to Supreme Court (No. 13078), where judgment was affirmed.

No. A. 2719. People ex rel. Ireland v. Iliff, et al.

Action for appointment of trustees, and accounting in estate of Wm. Barth. Pending.

No. A. 3047. Hearon, et al. v. Security Savings and Loan Association, et al.

Action at request of Building & Loan Commissioner to place company in receivership. Receiver appointed.

No. A. 3615. People ex rel. Morrati v. Eli M. Gross.

Action to test the right of Gross to hold the office of Building & Loan Commissioner. Action dismissed.

No. A. 3672. Regents of U. of Colorado v. Colonial Drug and Sales Company.

Action to recover money paid for alcohol for the medical department, which was not delivered. Pending.

No. A. 3783. Morrato, et al. v. Civil Service Commissioner, et al.

Action to enjoin Flebbe from exercising the powers of Deputy Building & Loan Commissioner. Case awaiting dismissal due to Flebbe's failure to pass examination.

No. A. 3963. People v. Ruybal, et al.

Action on bond to collect land rental. Pending.

No. A. 4987. People v. Nesbit & Hayward, partners.

Action to recover gas tax. Pending.

No. A. 5009. Colorado Seminary v. Denver, et al.

Action to enjoin collection of taxes. Pending.

Chalmers v. Board of Medical Examiners.

Suit to review action of Board of Medical Examiners in revoking license. Pending.

Kelman C. Sapero v. Board of Medical Examiners.

Suit to review action of Board of Medical Examiners in revoking license. Action of Board confirmed. Appealed to Supreme Court (90 Colo. 568), where the judgment was reversed.

Milne, et al. v. Erbaugh, et al.

Application for Writ of Habeas Corpus. Case dismissed.

Freeman v. Erbaugh, et al.

Application for Writ of Habeas Corpus. Case dismissed.

The Children's Hospital Association v. Woodward, et al.

Action to interpret will of Frand L. Woodward, deceased. Decree entered July 16, 1932.

People ex rel. Morrato v. Fred W. Flebbe.

Action to test the right of Flebbe to hold the office of Deputy Building & Loan Commissioner. Flebbe failed to pass examination. Case awaiting motion for dismissal.

People ex rel. Pueblo-San Luis Valley Transportation Co., et al. v. Secretary of State.

Mandamus action to enjoin Secretary of State from collecting penalty for non-payment of certain corporation fees. Pending.

People v. Porter.

Action by surety company to recover money paid under bond, for taxes. This office has no further interest in case.

Elbert County

Board of Commissioners v. Heald, et al.

Condemnation proceeding. Pending.

Union Pacific Railroad Company v. County Commissioners of Elbert County.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

El Paso County

No. 783. Wood v. State Land Board.

Petition for survey. Decree entered.

No. 16169. State Highway Department v. Frank Hudson, et al.

Mandamus action to secure right of way for highway. Order for temporary possession entered. Settled.

No. 16629. State Highway Department, et al. v. A. W. Haigler, et al.

Action to condemn right of way for a highway. Order for temporary possession entered. Settled.

No. 16630. State Highway Department, et al. v. Florence Lindley, et al.

Action to condemn right of way for a highway. Order for temporary possession entered. Settled.

No. 16631. State Highway Department, et al. v. M. A. London, et al.

Action to condemn right of way for a highway. Order for temporary possession entered. Settled.

No. 16632. State Highway Department, et al. v. Willis Fiedler, et al.

Action to condemn certain lands for right of way for a highway. Order for temporary possession entered. Settled.

No. 16758. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of El Paso County. Settled in accordance with the judgment in No. 8767 in the U. S. District Court.

County Commissioners and State Highway Department v. Foster.

Order for temporary possession issued. Settled.

The State Highway Department v. Rudolph Scheuler, et al.

Condemnation action. Settled.

Midland Terminal Ry. Co. v. Colorado Tax Commission.

Action to recover taxes. Pending outcome of Case No. 12962 in Supreme Court.

No. 18103. The Broadmoor Hotel, Water and Power Company v. Colorado Tax Commission.

Action for refund of taxes. Complaint dismissed and judgment entered in favor of defendant.

No. 18104. The Midland Terminal Railway Company v. Colorado Tax Commission.

Action for refund of taxes. Assessed valuation of railroad reduced to $490,000. Appealed to Supreme Court (No. 12962).

No. 18429. Phi Gamma Delta v. Albert H. Horton, as Treasurer.
Suit to enjoin collection of taxes on fraternity house. Pending.

No. 18854. Fountain Valley School v. Horton, et al.
Action to enjoin the assessment and collection of taxes. Pending.

No. 18874. People ex rel. v. Dollar Building & Loan Association.
Action to place company in receivership. Receivership granted.

No. 18902. People ex rel. v. City Savings Building and Loan Association.
Application to place company in receivership. Receiver appointed.

No. 18914. People ex rel. v. Home Savings Building & Loan Association.
Application to have receiver appointed for company. Receiver appointed.

Fremont County

No. 4858. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of Fremont County.
Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8767 in U. S. District Court.

No. 5123. People ex rel. F. E. Crawford v. Allen.
Mandamus action by Crawford to be reinstated as warden of the State Penitentiary. Judgment of dismissal.

No. 5199. Petition of Irving Phillips for a Writ of Habeas Corpus.
Denied.

No. 5200. Petition of Mike Carlson for a Writ of Habeas Corpus.
Denied.

Petition of W. C. Phillips for a Writ of Habeas Corpus.
Denied.

Garfield County

No. 2771. Standard Shale Company v. County Commissioners and State Tax Commission.
Action for refund of taxes. Pending.

Town of Rifle, et al. v. Dunham.
Condemnation proceeding. Order for temporary possession. Settled.

Grand County

County Commissioners, et al. v. The Denver & Salt Lake Ry. Co., et al.
Condemnation proceeding. Settled.

Huerfano County

People ex rel. v. Swanson, et al.

Mandamus action to compel payment of money. Peremptory writ denied. Settled.

Jefferson County

No. 3100. State Land Board v. Orr, et al.

Unlawful detainer. Pending outcome of Case No. 3127.

No. 3124. Colorado Central Power Company v. Colorado Tax Commission.

Action for refund of taxes. Judgment for plaintiff. Appealed to Supreme Court (No. 12949).

No. 3127. People v. Board of County Commissioners.

Action for re-survey of land. Pending hearing on exceptions to survey.

No. 3333. Colorado Central Power Co. v. County Commissioners.

Action for refund of taxes. Pending outcome of Case No. 12949 in Supreme Court.

No. 3235. The Denver Bible Institute v. Colorado Tax Commission.

Appeal from order of Tax Commission for assessment and payment of taxes. Judgment for plaintiff. Appealed to Supreme Court (No. 12959).

Kiowa County

County Commissioners and State Highway Department v. Thayer, et al.

Action for right of way. Settled.

Kit Carson County

No. 2756. People v. Nelson, et al.

Action to establish boundaries of Sec. 36, T. 10 S., R. 42 W. Pending Commissioners' report.

Larimer County

No. 5780. Union Pacific Railroad Co. v. County Commissioners of Larimer County.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

Paul Miller v. Game and Fish Commissioner.

Appeal from decision denying right to float ties down river. Decision sustained. No. appeal.

No. 6374. People v. Frank Miller.

Action to collect gas tax. Judgment for plaintiff by default. Satisfied.

No. 6440. People ex rel. Elmer Moore v. Chas. Lory, et al.

Petition for alternative writ of mandamus. Case dismissed.

No. 6523. Zimmerman v. Game and Fish Commissioner.

Mandamus action to compel State Game and Fish Commissioner to appoint arbitrators. Settled.

Las Animas County

No. 11746. People v. John Zurowski.

Action to recover two-cent gasoline tax. About one-half paid and action dismissed.

Lincoln County

Union Pacific Railroad Co. v. County Commissioners of Lincoln County.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

Kistler v. Thompson and State Board of Land Commissioners.

Suit to compel performance of contract. Pending.

Logan County

Union Pacific Railroad Company v. County Commissioners of Logan County.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in No. 8718 in the U. S. District Court.

North Sterling Irrigation District v. Hezmalhalch, et al.

Injunction to restrain water supervision. Case settled.

Montezuma County

No. 925. T. A. Schonberg, et al. v. Board of County Commissioners, et al.

Action to recover taxes. Settled.

Morgan County

No. 5259. Union Pacific Railroad Co. v. County Commissioners of Morgan County.

Action to recover alleged excessive taxes. Settled in accordance with the judgment in Case No. 8718 in the U. S. District Court.

Otero County

No. 4021. Colorado Savings & Trust Co. v. County Commissioners.

Action to recover taxes paid under protest. Stipulation of settlement.

Park County

No. 1932. Miller v. Barkley, Water Commissioner.

Injunction to restrain use of water and for damages. Pending.

No. 1959. Northern Colorado Irrigation Company, et al. v. Miller, et al.

Action involving water priorities. Temporary injunction granted. Pending.

Pueblo County

No. 20407. People v. Stanley Fruit Company.

Action to collect melon inspection fees. Settled.

Board of County Commissioners v. State Board of Land Commissioners.

Action to condemn state land. Settled.

No. 20616. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of Pueblo County.

Action to recover excessive taxes. Settled in accordance with the judgment in Case No. 8767 in the U. S. District Court.

No. 20756. People v. Stanley Fruit Company.

Money demand for inspection fees. Dismissed.

No. 3097. Parry & Jones v. Board of Corrections.

Action involving judgment on arbitrators award. Judgment set aside. Appealed to Supreme Court (No. 13024).

No. 22830. People ex rel. v. Railway Savings & Building Association.

Application for appointment of receiver. Receiver appointed. Company reorganized and receiver discharged.

Rio Blanco County

No. 513. M. E. Smith, et al. v. L. D. Blauvelt, et al.

Pending on Demurrer. Dismissed by stipulation.

Rio Grande County

No. 3597. Sargent School District, et al. v. Katherine Craig, State Superintendent.

Mandamus to compel State aid. Case dismissed.

Routt County

State Highway Department v. Otto, et al.

Condemnation proceeding for right of way. Pending.

Saguache County

No. 1183. County Commissioners and Highway Department v. Tate, et al.

Condemnation for state. Order for temporary possession issued August 4, 1930. Closed.

Sedgwick County

No. 1227. Union Pacific Railroad Company v. County Commissioners of Sedgwick County.

Action to recover alleged excessive taxes. Case settled in accordance with judgment in No. 8718 in the U. S. District Court.

Teller County

No. 4431. The Midland Terminal Railway Company v. Colorado Tax Commission.

Action for refund of taxes. Assessed valuation of railroad reduced to $490,000. Appealed to Supreme Court (No. 12963).

No. 4432. The Broadmoor Hotel, Water and Power Company v. Colorado Tax Commission.

Action for refund of taxes. Complaint dismissed and judgment entered in favor of defendant.

Midland Terminal Ry. Co. v. Colorado Tax Commission.

Action for refund of taxes. Pending outcome of Case No. 12963 in Supreme Court.

Washington County

Union Pacific Railroad Co. v. County Commissioners of Washington County.

Action to recover alleged excessive taxes. Case settled in accordance with judgment in No. 8718 in the U. S. District Court.

Weld County

No. 7549. Eastenes v. Adams, et al.

Damages growing out of coal strike. Judgment entered dismissing complaint with cost, August 6, 1930. Appealed to Supreme Court (No. 12735).

No. 7634. Morrison v. Adams, et al.

Damages growing out of coal strike.

No. 7635. Nelson v. Adams, et al.
Damages growing out of coal strike.

No. 7636. Morrison v. Adams, et al.
Damages growing out of coal strike.

No. 7637. Sparros v. Adams, et al.
Damages growing out of coal strike.

No. 7638. Herrera v. Adams, et al.
Damages growing out of coal strike.

No. 7639. Mazzine v. Adams, et al.
Damages growing out of coal strike.

No. 7640. Brierley v. Adams, et al.
Damages growing out of coal strike.

No. 7641. Zarini v. Adams, et al.
Damages growing out of coal strike.

No. 7642. Georgeff v. Adams, et al.
Damages growing out of coal strike.

No. 7643. Jacovette v. Adams, et al.
Damages growing out of coal strike.

No. 7644. Milo v. Adams, et al.
Damages growing out of coal strike.

No. 7645. Brandon v. Adams, et al.
Damages growing out of coal strike.

No. 7646. Bottinelli v. Adams, et al.
Damages growing out of coal strike.

No. 7647. Krivokopich v. Adams, et al.
Damages growing out of coal strike.

No. 7648. Pappas v. Adams, et al.
Damages growing out of coal strike.

No. 7649. Sokrodia v. Adams, et al.
Damages growing out of coal strike.

No. 7650. Bullich v. Adams, et al.
Damages growing out of coal strike.

The foregoing seventeen cases are all pending the outcome of Case No. 7549, Eastenes v. Adams, et al.

Colorado Central Power Company v. Tax Commission.

Action for refund of taxes. Pending outcome of Case No. 12949 in the Supreme Court.

No. 8427. School District No. 32, et al. v. Treasurer of Weld County.

Action to enjoin apportionment of school funds. Case dismissed.

No. 8488. School District No. 19 v. Treasurer of Weld County.

Action to enjoin apportionment of school funds. Judgment for plaintiff and case dismissed as to State Superintendent.

No. 8492. In the Matter of the Adjudication of Priorities of Water Rights in Irrigation District No. 1.

Claim of State Land Board . . . Rosener Reservoir. Pending.

No. 8514. Riverside Reservoir and Land Co. v. Hinderlider, et al.

Action to enjoin use of water. Temporary injunction denied. Pending.

No. 8515. Bijou Irrigation District v. Hinderlider, et al.

Action to enjoin use of water. Temporary injunction denied. Pending.

Yuma County

M. E. Christ, et al. v. Henry Armknecht, et al.

Mortgage foreclosure involving Board of Regents. Pending.

WORKMEN'S COMPENSATION CASES IN THE DISTRICT COURTS OF COLORADO

Denver County

A. H. Flood v. Industrial Commission and J. R. Wilson.

Action to set aside award. Dismissed in District Court for lack of prosecution.

A. T. Lewis & Son Dry Goods Co. and Ocean Accident and Guaranty Co. v. Industrial Commission and Melvern G. Reed.

Action to set aside award. Dismissed in District Court for lack of prosecution.

Mendal Band and Molly Band, doing business as Silver Hungarian Restaurant v. Rose A. Taylor and Industrial Commission.

Action to set aside award. Affirmed in District Court.

Vought v. Industrial Commission and City and County of Denver.

Action to set aside award. Affirmed in District Court.

Fred Rogers v. Industrial Commission and Public Service Company.

Action to set aside award. Pending.

The Employers Mutual Insurance Company, a corporation, and The National Fuel Company, a corporation, v. Industrial Commission and Christ Evanoff.

Action to set aside award. By stipulation files returned to Industrial Commission. New award. Appealed by claimant. Motion to dismiss by Industrial Commission and Employer sustained in District Court.

Tyler, et al. v. George Hagerman and Industrial Commission.

Award affirmed in lower court. Judgment reversed in Supreme Court with directions September 22, 1930. Further award. Action to set aside this award in Boulder County. Award affirmed in District Court. No appeal to Supreme Court.

Colorado Fuel & Iron Co. v. I. C. and Wm. E. Crawford.

Action to set aside award. Award affirmed in District Court. Reversed in Supreme Court, April 20, 1931, No. 12769.

John Mannion v. Christenson Construction Co., et al.

Action to set aside award. By agreement case was remanded to the Industrial Commission for further proceedings.

Charles Mantor v. Industrial Commission of Colorado, The Stearns-Rogers Manufacturing Company, and London Guarantee and Accident Company, Limited.

Action to set aside award affirmed in District Court. Affirmed in Supreme Court May 11, 1931, No. 12788.

La Fayette Ryan v. Industrial Commission and State Compensation Fund, et al.

Action to set aside award. Affirmed. Reversed in Supreme Court, No. 12890.

The State Compensation Insurance Fund v. Industrial Commission, Frances E. Kelso, et al.

Action to set aside award. Award affirmed. Affirmed in Supreme Court September 21, 1931, No. 12883.

Industrial Commission, et al. v. W. J. Pappas.

Action to set aside award. Award vacated in District Court. Affirmed in Supreme Court July 27, 1931, No. 12813.

Georgia Frances Peyton, et al. v. Industrial Commission and Thompson Manufacturing Co., et al.

Action to set aside award. Pending in District Court.

Public Service Co. v. Industrial Commission of Colorado and Nellie Tittes, et al.

Action to set aside award. Affirmed in District Court. Affirmed in Supreme Court September 28, 1931, No. 12886.

The Employers Mutual Insurance Co., et al. v. Industrial Commission, et al.

Action to vacate award. Affirmed. Reversed with instructions in Supreme Court October 5, 1931, No. 12837.

The Industrial Commission of Colorado, The Ocean Accident and Guarantee Corporation, et al. v. C. M. Roper.

Action to vacate award. Vacated in District Court. Judgment modified and affirmed June 6, 1932, in Supreme Court, No. 13003.

Federal Surety Co. and Charles B. Owen v. Industrial Commission and William H. Gaines.

Action to vacate award. Judgment remanded to Industrial Commission for further evidence.

Dave Josephson v. Industrial Commission and State Compensation Insurance Fund.

Action to vacate award. Affirmed.

Colorado Fuel & Iron Co. v. Industrial Commission, Johanna Kambie, et al.

Action to vacate award. Affirmed. Judgment reversed in Supreme Court February 29, 1932, No. 12976.

W. L. Ferguson v. Industrial Commission, Hitchcock & Tinkler, et al.

Action to vacate award. Award affirmed in District Court.

Mary E. Lawrence, et al. v. Industrial Commission, et al.

Action to set aside award. Affirmed. Motion to dismiss writ of error in Supreme Court, No. 13127. Granted.

Industrial Commission and Victor American Fuel Co. v. Richard O. Lockard.

Action to set aside award. Award vacated by District Court. Modified and affirmed September 21, 1931, by Supreme Court, No. 12891.

Industrial Commission and Victor American Fuel Co. v. Richard O. Lockard.

Action to set aside award. Award vacated by District Court. Reversed and remanded February 29, 1932, by Supreme Court, No. 13016.

Richard O. Lockard v. Industrial Commission and Victor American Fuel Co.

Action to vacate award. Award affirmed in District Court. Judgment affirmed in Supreme Court June 20, 1932, No. 13096.

Helen Tripp, et al. v. Industrial Commission, et al.

Action to vacate award. Award affirmed in District Court. Judgment affirmed in Supreme Court, Case No. 12867, October 13, 1931.

C. E. Wells, et al. v. Mildred Cutler.

Action to vacate award. Award affirmed in District Court. Judgment affirmed in Supreme Court, Case No. 12972, December 21, 1931.

Continental Grocery Corp. and Southern Surety Co. v. Industrial Commission.

Action to vacate award. Pending.

Cresson Consolidated Gold Mining and Milling Co. v. Industrial Commission, et al.

Action to vacate award. Affirmed in District Court. Reversed in Supreme Court March 7, 1932, Case No. 12969.

The Home Insurance Company, et al v. Margaret Mae Hepp, et al.

Action to vacate award. Award vacated in District Court. Judgment affirmed in Supreme Court October 31, 1932, Case No. 13156.

Charles B. Owen and Federal Surety Co. v. Iva Maud Cramer, et al.

Action to vacate award. By agreement award remanded to Industrial Commission.

Juanita Shephard, et al v. Industrial Commission, et al.

Action to vacate award. Award affirmed. No appeal.

Luther McFadden v. Industrial Commission, et al.

Action to vacate award. Pending on demurrer.

Zurich General Accident & Liability Insurance Company v. S. M. Bundy.

Action to vacate award. Pending.

Croy v. Industrial Commission, City and County of Denver, et al.

Action to vacate award. Award affirmed.

The Continental Grocery Corp., et al. v. Industrial Commission and Bessie Hale.

Action to vacate award. Pending.

Duras v. Industrial Commission, The Manhattan Restaurant Co., et al.

Action to vacate award. Award affirmed in District Court. Judgment reversed in Supreme Court April 25, 1932, Case No. 13013.

Hayden Coal Co., et al. v. The Industrial Commission and Mary A. Cassidy.

Action to vacate award. Award vacated and remanded for further testimony. No appeal.

The North Park Coal Company, et al. v. The Industrial Commission and Tony Sandos.

Action to set aside award. Affirmed in District Court. Reversed in Supreme Court April 4, 1932, Case No. 13010.

Colorado Fuel & Iron Co. v. Industrial Commission and M. E. Cartwright.

Action to set aside award. Award vacated. No appeal.

The Hayden Brothers Coal Corp., et al. v. The Industrial Commission and Teofie Uzenki.

Action to set aside award. Award affirmed in District Court. Judgment reversed in Supreme Court April 4, 1932, No. 13025.

U. S. Fidelity & Guaranty Co., et al. v. Industrial Commission and Frank Jones.

Action to set aside award. Award affirmed in District Court. No appeal.

U. S. Fidelity & Guaranty Co., et al. v. The Industrial Commission and Dewey Cobb.

Action to set aside award. Award affirmed in District Court. Judgment affirmed in Supreme Court June 6, 1932, Case No. 13097.

James Morissey v. Industrial Commission of Colorado, et al.

Action to vacate award. Pending.

Hannah Richardson v. Industrial Commission, New Method Cleaners and Dyers, et al.

Action to set aside award. Award affirmed. No appeal.

Sarah Greene v. State Industrial Commission.

Action to set aside award. Award affirmed in District Court. No appeal.

Paul Shriver v. The Industrial Commission, et al.

Action to set aside award. Award affirmed. No appeal.

National Fuel Company, et al. v. The Industrial Commission and John Sarson.

Action to set aside award. Award affirmed. No appeal.

Empire Zinc Co. v. The Industrial Commission and Malcolm Mac Harrie.

Action to set aside award. Award affirmed in District Court. Judgment affirmed in Supreme Court September 12, 1932. No. 13143.

Cumming (May) v. Industrial Commission, Montgomery Ward & Co., et al.

Action to set aside award. Dismissed with prejudice by plaintiff.

National Tire Stores, Inc. v. Industrial Commission and Virginia M. Moore, et al.

Action to set aside award. Award affirmed. No appeal.

Harold Welborn v. Industrial Commission, Hitchcock & Tinkler, et al.

Action to set aside award. Award affirmed. No appeal.

Empire Zinc Company v. Industrial Commission and Luisita M. Vasquez.

Action to set aside award. Pending.

London Guarantee & Accident Company, et al. v. Fay Burgess Anderson, et al.

Action to set aside award. Case remanded to Industrial Commission by stipulation for further award because of death of Amanda T. Anderson.

Colorado Fuel & Iron Co. v. Industrial Commission and Margarita Reyes, et al.

Action to set aside award. Award affirmed.

William Winteroth v. Industrial Commission, Western Steam Laundry Co., et al.

Action to set aside award. Pending.

The H. C. Lallier Construction and Engineering Co., et al. v. The Industrial Commission and Mrs. Nellie Beaman.

Action to set aside award. Award affirmed by District Court. Judgment reversed by Supreme Court December 12, 1932, No. 13163.

The Colorado Fuel & Iron Co. v. The Industrial Commission and Frank Stasko.

Action to set aside award. Award vacated and case returned to Industrial Commission for further findings.

The Kemper, Kelly & Kitch Feeding Co., et al. v. The Industrial Commission and H. M. LaPier.

Action to set aside award. Pending.

Joe Varra v. The Industrial Commission, National Fuel Co., et al.

Action to set aside award. Pending.

Charles J. Moynihan v. Industrial Commission and The Oliver Power Co.

Action to set aside award. Pending.

Central Surety Co., et al. v. The Industrial Commission and Louis Wetzig.

Action to set aside award. Award affirmed by District Court.

London Guarantee & Accident Co., et al. v. M. E. Bradley and The Industrial Commission.

Action to set aside award. Pending.

The Liley Coal and Land Co., et al. v. The Industrial Commission and Julius Revielle.

Action to set aside award. Award vacated and returned to Commission for further proceedings. No appeal.

London Guarantee and Accident Co., et al. v. Clyde Sauer, et al.

Action to set aside award. Award affirmed in District Court.

The Vreeland Radio Corp., et al. v. Eunice E. Morgan, et al.

Action to set aside award. Pending.

Consolidated Coal and Coke Company, et al v. The Industrial Commission and John Pahor.

Action to set aside award. Award vacated in District Court and case returned to Commission for further proceedings by stipulation.

Ernest Hall v. Eastern Colorado Oil Corp., State Land Board and The State Compensation Fund.

Claim pending before Referee of the Industrial Commission.

The Rocky Mountain Fuel Co., et al. v. The Industrial Commission and Darvin Wilson.

Action to set aside award. Award affirmed.

William T. Knox, et al. v. The Industrial Commission, The State Compensation Fund, et al.

Action to set aside award. Pending.

Clayton Coal Co., et al. v. The Industrial Commission and Mary Tsikiris.

Action to set aside award. Pending.

The Iowa Gold Mining & Milling Co., et al. v. The Industrial Commission and Carl Holt.

Action to set aside award. Pending.

El Paso County

Potts v. Industrial Commission and J. Hilt Vittetoe, et al.

Action to vacate award. Award vacated and remanded to Industrial Commission to find further facts. No appeal.

Larimer County

C. S. Barnett v. National Lumber & Creosoting Co., et al.

Action to vacate award. Award vacated. No appeal.

Esther A. Kyle v. The Big Horn Cattle Co., et al.

Action to set aside award. Award affirmed by District Court. No appeal.

Las Animas County

Mike Davich, et al. v. Industrial Commission and Genoveva Vilasquez.

Action to set aside award. Affirmed.

Joe Amato v. Mike Pilonetti.

Action to enforce award. Award paid in full.

Phillips County

Co-operative Oil Company v. Industrial Commission and Frank X. Meile.

Action to set aside award. Pending.

Pueblo County

J. R. Poole v. Industrial Commission and The Fidelity and Casualty Co., et al.

Action to set aside award. Pending.

PUBLIC UTILITY CASES IN THE DISTRICT COURTS

Boulder County

No. 9176. P. U. C. v. Montgomery.

Injunction to restrain illegal operation of motor vehicle. Denied. Appealed to Supreme Court (No. 13178).

No. 9177. People v. J. H. Anderson.

Injunction to restrain illegal operation of motor vehicle. Temporary injunction granted. Settled.

No. 9178. S. J. Anderson v. P. U. C.

Injunction to restrain P. U. C. from enforcing Ch. 120, S. L. 1931. Denied and case dismissed.

No. 9280. Town of Erie v. P. U. C.

Action to review order of P. U. C. authorizing abandonment of station agency at Erie. Order of P. U. C. vacated. Appealed to the Supreme Court (Case No. 13207).

Denver County

No. 88883. People v. A. T. Burbridge, et al.

Action to restrain operation of bus line. Injunction granted. No appeal.

No. 105047. People v. M. B. Swena.

Action to enjoin illegal truck operations. Order for temporary injunction entered. Case dismissed October 14, 1931.

No. 109417. People v. Clarence Wright.

Injunction to enjoin illegal truck operations. Granted.

No. 109772. Burbridge v. Public Utilities Commission.

Decree sustaining findings of Public Utilities Commission, November 17, 1930. Appealed to Supreme Court, No. 12906, where judgment was reversed.

No. 110066. People v. Schwilke.

Injunction to restrain operation of motor vehicle without certificate. Permanent injunction granted. Terms violated and Schwilke found guilty of contempt and fined. Appealed to Supreme Court (No. 13133).

No. 111432. People v. Jack Perry.

Action to enjoin truck operations. Temporary injunction granted. Case settled.

No. A3745. D. & R. G. Ry. Co. v. P. U. C.

Action to review decision of P. U. C. relative to rates on livestock. Judgment for respondents. Appealed to Supreme Court (No. 13148).

No. A4623. Schwab v. P. U. C.

Action to review order of P. U. C. restraining operation of motor vehicle. Pending.

El Paso County

No. 19008. Weicker Transfer Co., et al. v. P. U. C.

Action to review order of P. U. C. denying carriers right to file joint through rates. Pending.

No. 18482. Miller v. P. U. C.

Action to review order of P. U. C. denying certificate of public convenience and necessity. Pending.

No. 18496. Kidd, et al. v. P. U. C.

Action to review order of P. U. C. denying certificate of public convenience and necessity. Order of P. U. C. sustained.

Huerfano County

People v. Levy.

Action to enjoin illegal trucking operations. Case dismissed.

Lake County

No. 6430. City of Leadville v. P. U. C.

Action to review order of P. U. C. authorizing increased water rates by Leadville Water Company. Case dismissed by stipulation.

Larimer County

No. 6585. People v. Ludlow; People v. Kimble.

Actions to enjoin operation of motor truck without permit. Injunction granted.

Mesa County

No. 5245. People v. Burt.

Action to enjoin alleged illegal trucking operations. Permanent injunction granted. No appeal.

No. 5250. People v. Jaynes.

Action to enjoin alleged illegal trucking operations. Permanent injunction granted. No appeal.

No. 5251. People v. Burdick.

Action to enjoin alleged illegal trucking operations. Permanent injunction granted. No appeal.

ESCHEAT AND PROBATE CASES COUNTY COURTS

Adams County

Estate of James W. Mitchell, deceased.

Estate closed and money paid to State Treasurer.

Arapahoe County

Estate of Phil O'Leary, deceased.

Share of James A. O'Leary ordered paid to him.

Estate of Hans H. Hansen, deceased.

Pending.

Estate of Peter Franzen, deceased.
Two actions pending in District Court of Arapahoe County.

Estate of Bernhardt Peterson, deceased.
Pending.

Archuleta County

Estate of Hans Wieck, deceased.
Pending.

Bent County

Estate of Charles Givens, deceased.
Pending.

Boulder County

Estate of Hans Nelson, deceased.
Pending.

Chaffee County

Estate of Charles Pappas, deceased.
Pending.

Estate of John Brumley, deceased.
Pending.

Estate of Charles W. Marsh, deceased.
Pending.

Estate of Sabrina A. Newell, deceased.
Pending.

Estate of Thomas H. Thompson, deceased.
Pending.

Estate of Chas. E. Roemke, deceased.
Pending.

Clear Creek County

Estate of E. A. Erickson, deceased.
Pending.

Estate of Chas. J. Olson, deceased.
Pending.

Custer County

Estate of William Cockrane, deceased.
Estate closed and money paid to State Treasurer.

Denver County

Estate of Louis Maharas, deceased.
Estate closed and money paid to State Treasurer.

Estate of Edward Nolan, deceased.
Petition for repayment of money paid to State Treasurer. Granted.

Estate of Charles Otto, deceased.
Estate closed and money paid to State Treasurer.

Estate of Harry Faltrick, deceased.
Pending.

Estate of Edward Campbell, deceased.
Pending.

Estate of Arthur McVaugh, deceased.
Pending.

Estate of Thomas Short, deceased.
Pending.

Estate of William Sommers, deceased.
Pending.

Estate of Victor Andrasko, deceased.
Pending.

Estate of Charles H. Marks, deceased.
Pending.

Estate of Charles Baker, deceased.
Estate closed and money paid to State Treasurer.

Estate of Mary Whalen, deceased.
Pending.

Estate of Olive Robson, deceased.
Pending.

Estate of Ed Schaeffer, deceased.
Estate closed and money paid to State Treasurer.

Estate of Sadie Douglas, deceased.
Pending.

Estate of Anna M. Lusby, deceased.
Pending.

Estate of Nick Constantine, deceased.
Estate closed and money paid to State Treasurer.

Estate of Bridget McLean, deceased.
Petition for repayment of money paid to State Treasurer. Granted.

Estate of Andy Johnson, deceased.
Estate closed and money paid to State Treasurer.

Estate of Charles McCabe, deceased.
Pending.

Estate of Carl Schoen, deceased.
Pending.

Estate of Victor Hill, deceased.
Estate closed and money paid to State Treasurer.

Estate of S. H. Larsen, deceased.
Pending.

Estate of Alexander Madison, deceased.
Pending.

Estate of Mary E. Sweeney, deceased.
Pending.

Estate of Andrew McDermatt, deceased.
Pending.

Estate of Joseph Kuseh, deceased.
Pending.

Estate of Peter Miller, deceased.
Pending.

Estate of Steve Kasmach, deceased.
Pending.

Estate of Hugh Beatty, deceased.
Estate closed and money paid to State Treasurer.

Estate of Chris S. Peterson, deceased.
Estate closed and money paid to State Treasurer.

Estate of Thomas Mudge, deceased.
Estate closed and money paid to State Treasurer.

Estate of Patrick J. Collins, deceased.
Pending.

Estate of May Chapman, deceased.
Estate closed and money paid to State Treasurer.

Estate of Mary Gross, deceased.
Pending.

Estate of Jefferson B. Strut, deceased.
Estate closed and money paid to State Treasurer.

Estate of John M. Cassell, deceased.
Pending.

Estate of John Davis, deceased.
Pending.

Estate of William A. Faust, deceased.
Pending.

Estate of Ola Waldrum, deceased.
Pending.

Estate of Nat Emery, deceased.
Pending.

Estate of Andy Irving, deceased.
Pending.

Estate of Mary B. Rasmussen, deceased.
Pending.

Estate of Carrie Brown Nelson, deceased.
Pending.

Estate of Adam Weiss, deceased.
Pending.

Dolores County

Estate of James Best, deceased.
Pending.

Eagle County

Estate of William C. Rhinehart, deceased.
Pending.

El Paso County

Estate of Challos Gimes (Charles James) deceased.
Estate closed and money paid to State Treasurer.

Estate of Samuel Hackett, deceased.
Pending.

Estate of Fred H. Day, deceased.
Pending.

Fremont County

Estate of J. P. Torrence, deceased.
Estate closed and money paid to State Treasurer.

Estate of John R. Harshberger, deceased.
Estate closed and distributive share of one heir paid to State Treasurer.

Estate of Viola Glover, deceased.
Pending.

Huerfano County

Estate of Edwin A. Lewis, deceased.
Petition for repayment of money paid to State Treasurer, granted.

Jefferson County

Estate of Frank Platzer, deceased.
Pending.

Estate of Mary Herman, deceased.
Pending.

Estate of J. F. Dunn, deceased.
Pending.

Estate of Sarah Jones, deceased.
Pending.

Estate of Katie Massie, deceased.
Pending.

La Plata County

Estate of Joseph Emminger, deceased.
Determination of heirship. Not an escheat.

Estate of Fred A. Disbrow, deceased.
Estate closed and money paid to State Treasurer.

Larimer County

Estate of Joseph J. Scanlon, deceased.
Determination of heirship. Not an escheat.

Estate of Charles Luft, deceased.
Determination of heirship. Heirs determined.

Las Animas County

Estate of Hugo Borath, deceased.
Pending.

Estate of Angelo Graziano, deceased.
Petition for repayment of money paid to State Treasurer. Granted.

Mesa County

Estate of John Earl, deceased.
Estate closed and money paid to State Treasurer.

Estate of Frank O'Neil, deceased.
Pending.

Montrose County

Estate of Almira Young, deceased.
Estate closed and money paid to State Treasurer.

Estate of Michael Donlen, deceased.
Pending.

Morgan County

Estate of James O'Hara, deceased.
Pending.

Estate of Michael Donlan, deceased.
Estate closed and money paid to State Treasurer.

Ouray County

Estate of Lewis Blanchard, deceased.
Pending.

Estate of Thomas Mudge, deceased.
Pending.

Otero County

Estate of John W. Miller, deceased.
Pending.

Estate of Julia A. Best, deceased.
Petition for payment of money paid to State Treasurer. Granted.

Park County

Estate of Anton Edwards, deceased.
Pending.

Pueblo County

Estate of Harry L. Darr, deceased.
Pending.

Estate of Lena Smith, deceased.
Pending.

Estate of Ida A. Nikirk, deceased.
Estate closed and money paid to State Treasurer.

Estate of John Mihelich, deceased.
Estate closed and money paid to State Treasurer.

Estate of Agnes M. Hicks, deceased.
Pending.

Rio Grande County

Estate of William Chives, deceased.
Pending.

Routt County

Estate of John Kephart, deceased.
Pending.

Saguache County

Estate of Henry Lacey, deceased.
Estate closed and money paid to State Treasurer.

San Juan County

Estate of Robert Williamson, deceased.
Pending.

San Miguel County

Estate of Chas. Ross, deceased.
Pending.

Teller County

Estate of Edwark Kendall, deceased.
Pending.

Washington County

Estate of Eugene Purdy, deceased.
Pending.

Weld County

Estate of Gus W. Haagenson, deceased.
Petition for repayment of money paid to State Treasurer. Granted.

Estate of W. W. Hill, deceased.
Petition for repayment of money paid to State Treasurer. Granted.

Estate of John Zurick, deceased.
Pending.

CASES IN COUNTY COURTS

Denver County

Estate of Rachael M. Schleier.

Will contest involving bequest for public use. Will admitted to probate. Appealed to Supreme Court (No. 13000).

Park County

No. 942. Miller and Miller v. Desserick, Water Commissioner.

Suit to restrain enforcement of water decrees. Order for temporary injunction vacated May 27, 1931.

Rio Grande County

In the Matter of the Estate of William McManis, deceased.

Demurrer on behalf of Soldiers' and Sailors' Home, to the petition of Fanny McManis to set aside order of final settlement and distribution, overruled. Respondents elected to stand on demurrer and case appealed to Supreme Court (No. 13180).

CASES BEFORE THE STATE PUBLIC UTILITIES COMMISSION

No. 1633. In the Matter of the Application of The Continental Oil Company, et al. to construct a track across the highway in Adams County. Case dismissed.

No. 1774. In the Matter of the Application of the People ex rel. State Highway Department for the abolition of a grade crossing in Adams County. Denied.

No. 1788. In the Matter of the Application of the State Highway Department and the County of Routt for the opening of a public highway over track of the D. & S. L. Ry. in Routt County. Granted.

No. 1856. In the Matter of the Application of the State Highway Department, et al. for change in location of public highway grade crossing over the track of the D. & R. G. Ry. Co. Granted.

No. 1862. In the Matter of the Application of The Continental Oil Company, et al. for authority to construct a track across the highway in Adams County. Granted.

CASES BEFORE THE STATE CIVIL SERVICE COMMISSION

In re: Charges against F. Eugene Crawford, Warden of the State Penitentiary.

Crawford ordered removed.

People ex rel. J. N. Wicks v. Cochrane.

Charges against member of classified civil service. Case dismissed.

RECAPITULATION

In the United States Supreme Court—Cases disposed of, 4; cases pending, 3; total, 7.

In the Court of Appeals of The District of Columbia—Cases disposed of, 1; cases pending, 0; total, 1.

In the United States District Courts—Cases disposed of, 7; cases pending, 1; total, 8.

In the Interstate Commerce Commission—Cases disposed of, 2; cases pending, 6; total, 8.

In the Colorado Supreme Court (Civil)—Cases disposed of, 27; cases pending, 21; total, 48.

In the Colorado Supreme Court (Criminal)—Cases disposed of, 32; cases pending, 14; total, 46.

In the Colorado Supreme Court (Disbarment)—Cases disposed of, 4; cases pending, 0; total, 4.

In the Colorado Supreme Court (Contempt)—Cases disposed of, 3; cases pending, 0; total, 3.

In the Colorado Supreme Court (Workmen's Compensation)—Cases disposed of, 24; cases pending, 0; total, 24.

In the Colorado District Courts (Civil)—Cases disposed of, 99; cases pending, 57; total, 156.

In the Colorado District Courts (Workmen's Compensation)—Cases disposed of, 59; cases pending, 20; total, 79.

In the Colorado District Courts (Public Utilities Cases)—Cases disposed of, 18; cases pending, 3; total, 21.

In the County Courts (Escheat and Probate)—Cases disposed of, 33; cases pending, 75; total, 108.

In the County Courts (Misc.)—Cases disposed of, 3; cases pending, 0; total, 3.

Before the Colorado Public Utilities Commission—Cases disposed of, 5; cases pending, 0; total, 5.

Before the Colorado Civil Service Commission—Cases disposed of, 2; cases pending, 0; total, 2.

Total number of cases disposed of.....323

Total number of cases pending.....200

Total number of cases handled during the biennial period.....523

Requisition matters for the Governor.....137

Extradition matters for the Governor.....272

Extradition hearings before the Governor..... 55

SCHEDULE III

OPINIONS AND SYLLABI OF OPINIONS

RENDERED DURING THE BIENNIAL PERIOD

1931-1932

Note: These syllabi and opinions are reported in the chronological order of the dates on which the opinions were rendered. A copy of each opinion is on file under a number corresponding with that of the syllabus.

Opinions and Syllabi of Opinions

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1 SCHOOLS

To Inez Johnson Lewis, Jan. 29, 1931.

A teacher who holds a third grade certificate, which is renewed for another year, may take an examination for a second grade.

A teacher who holds a second grade certificate, renewed for two years, may take an examination for a first grade certificate.

The statute (Ch. 165, S. L. 1923) makes no requirement as to college credits.

2 GENERAL ASSEMBLY

To William D. MacGinnis, Feb. 2, 1931.

The Speaker of the House of Representatives has no authority to employ a House Parliamentarian, and the Auditor of State should not issue a warrant covering the salary for such employee.

3 ALCOHOL

To German E. Ellsworth, February 4, 1931.

Persons, firms and corporations holding permits from the United States Government for the manufacture of alcohol for industrial and scientific purposes within the State of Colorado are conducting a lawful enterprise and are not operating in violation of any exisitng laws of our State or of Article XXII of our Constitution.

February 4, 1931.

Mr. German E. Ellsworth,
Supervisor of Permits,
Bureau of Industrial Alcohol,
Denver, Colorado.

Dear Sir:

In response to your letter of inquiry of January 27, 1931, and other letters addressed to the Attorney General of this State, requesting an opinion as to whether or not the manufacture and sale of alcohol in the State of Colorado is lawful, please be advised as follows:

Article XXII of our Constitution provides:

> "From and after the first (1st) day of January, 1916, no person, association or corporation shall, within this state, manufacture for sale or gift any intoxicating liquors; and no person, association or corporation shall import into this state any intoxicating liquors for sale or gift; and no person, association or corporation shall, within this state, sell or keep for sale any intoxicating

liquors or offer any intoxicating liquors for sale, barter or trade; *provided, however,* that the handling of intoxicating liquors for medicinal or sacramental purposes may be provided for by statute."

The legislature, pursuant to said constitutional amendment, passed certain legislation providing for the enforcement of said amendment. (Chap. 57, Compiled Laws of 1921.) Section 29 of said Chapter defines intoxicating liquors as follows:

"This act shall be construed liberally to include within its provisions intoxicating liquors of every kind and character, which now are in use or which in the future may come into use as a beverage, no matter by what name they may be known or called, and no matter how small the percentage of alcohol they may contain, and no matter what other ingredients may be in them."

It will be noted that this section defines intoxicating liquor as a beverage, implying thereby a liquid containing alcohol intended for human consumption. The article prohibited is intoxicating liquor and not alcohol. The purpose of the law is to prohibit the use of liquor containing alcohol as a beverage and to regulate the same as used for medicinal and sacramental purposes. The constitutional amendment and the statutes, above referred to, are wholly silent regarding alcohol as used in the arts; or, as may be stated in another way, as used for industrial and scientific purposes.

For the first time the state legislature in 1917 (Chap. 83, C. L. 1921) passed an act to regulate the purchase and sale of alcohol, recognizing thereby that the manufacture and sale of alcohol as such had not been prohibited by Article XXII of our constitution. This act does not purport to deal with the manufacture of alcohol within the state, but does provide for the importing and handling of the same for other purposes than human consumption. The evident purpose of such legislation is to make more certain the enforcement of the state prohibition amendment and to prevent alcohol intended for use in the arts from being improperly diverted for the purpose of human consumption.

All alcohol in Colorado, therefore, whether manufactured within the state or imported, must be bought and sold under this law and cannot be dispensed as intoxicating liquor upon doctors' prescriptions, as provided in said Chapter 57.

The courts likewise have recognized the difference between alcohol as contained in intoxicating liquors and as used in the arts. Quoting *Black on Intoxicating Liquors*, it is said:

"The difficulty of the question lies in the fact that alcohol, while certainly intoxicating, is very rarely used as a beverage, but is adapted to many medicinal uses. It

is clear that no proof need be required of its intoxicating character. But the circumstances of the particular sale, the manner and purpose of it, and the characters of seller and purchaser, should be mainly consulted in determining whether it comes within the law. If a saloonkeeper sells alcohol to an intoxicated person, in order that the latter may drink it, it is evident that the law is violated. But if a druggist, not authorized to sell liquor, sells alcohol to a surgeon, to be used by the latter in preserving anatomical specimens, it is equally clear that there is no infraction of the law."

In the case of *Selzman v. United States*, 268 U. S. 466, 468, the late Chief Justice Taft made the following comment:

"The power of the Federal Government, granted by the Eighteenth Amendment, to enforce the prohibition of the manufacture, sale and transportation of intoxicating liquor carries with it power to enact any legislative measures reasonably adapted to promote the purpose. The denaturing in order to render the making and sale of industrial alcohol compatible with the enforcement of prohibition of alcohol for beverage purposes is not always effective. The ignorance of some, the craving and the hardihood of others, and the fraud and cupidity of still others, often tend to defeat its object. It helps the main purpose of the amendment, therefore, to hedge about the making and disposition of the denatured article every reasonable precaution and penalty to prevent the proper industrial use of it from being perverted to drinking it."

The Eighteenth Amendment of the Federal Constitution was there under consideration, but in our opinion these remarks of the late Chief Justice Taft are just as applicable to Article XXII of our State Constitution.

It may be contended that the state legislature intended to prevent the manufacture of alcohol for all purposes when it enacted the still law (Chap. 80, S. L. 1925). That law, however, makes the possession of a still unlawful only when used or designed or intended for the manufacture of intoxicating liquors. Our Supreme Court, when passing upon this act, in the case of *Gavin v. People*, 79 Colo. 190, had this to say:

"It is claimed that the so-called Still Act (S. L. 1925, c. 80) is unconstitutional. We have held otherwise. Roark v. People, 79 Colo. 181, 244 Pac. 909, decided at the present term. It is claimed that since the act punished for the possession of a still 'used, designed, or intended for the manufacture of intoxicating liquor,' it

> subjects one in possession of it to punishment without intent, since the manufacture of it designed it and the possessor may be holding it for a lawful purpose. When that question arises we will decide it. In the present case the still was used and intended to make whisky."

It may be further contended that our Supreme Court has placed a different interpretation upon our intoxicating liquor amendment to the constitution and the laws enacted to enforce the same when it rendered its decision upon the question as to whether or not jamaica ginger was an intoxicating liquor. In the case of *McLean v. People*, 66 Colo. 486, the court on page 488 said:

> "The evidence shows that jamaica ginger was frequently purchased by divers persons from defendant's store to be used as a beverage; that it was so used, and that it would and did produce intoxication."

Under the facts in that particular case, the Supreme Court held that jamaica ginger was an intoxicating liquor. It can hardly be said that that case went so far as to hold that all manufactured products containing alcohol are intoxicating liquors. That case, as well as a number of other cases of like nature, must be interpreted in the light of the evidence produced. We therefore must be of the opinion that the courts have not yet interpreted, or attempted to interpret, the state constitutional amendment as prohibiting the manufacture, sale or gift of all alcohol for all purposes, regardless of the uses to which it is intended or applied.

In reaching our conclusions in this matter, we are not unmindful of the recent decision rendered by the Honorable J. Foster Symes, Judge of the District Court of the United States for the District of Colorado in the case of *The Colonial Drug and Sales Company*, plaintiff, *v. The Western Products Company*, defendant.

We have examined the complaint in that case, the court's decision and the remarks made from the bench by the court at the conclusion of the argument upon the demurrer. We do not purport to say whether or not the decision is right or wrong in that case. We do say, however, that the court in that decision did not distinguish between alcohol as used in intoxicating liquors and intended for human consumption and alcohol as used in the arts or for industrial or scientific purposes.

We agree with the Honorable Judge J. Foster Symes to the extent that intoxicating liquors cannot be manufactured in the State of Colorado or any other product containing alcohol intended and used for human consumption.

Had our legislature heretofore outlined a detailed method

for the manufacture of alcohol as used in the arts in this state, it would have made the situation much easier to solve. Nevertheless, in our opinion, it is not necessary that the legislature cover this field of legislation to permit the manufacture of alcohol for industrial and scientific purposes in this state; in other words, alcohol never having been prohibited as such, it may be manufactured, sold and disposed of subject to existing legislation intended to control the same and adopted for the purpose of enforcing the intoxicating liquor laws. Such alcohol, however, must be dispensed pursuant to Chapter 83, C. L. 1921, authorizing licensed wholesade dealers to handle the same.

Plants now manufacturing alcohol in this state are under federal regulation and very little opportunity exists whereby the manufactured product may be diverted to an unlawful purpose, and so far as we are advised none has been so diverted to an unlawful use.

We are also mindful of the fact that we must not only look to the letter of the law but also the spirit of the law, and thus we are confronted with the situation of not only interpreting the law most liberally to prohibit the use of alcohol for unlawful purposes but also giving to such laws a like interpretation to protect the lawful and legitimate uses of the same.

We come, therefore, to the following conclusions:

(1) That Article XXII of the Constitution of the State of Colorado does not prohibit, or attempt to prohibit, the manufacture or sale of alcohol for use in the arts;

(2) That the legislature, in its discretion, may, from time to time, pass such legislation as it may see fit regarding alcohol as used in the arts to make more certain the enforcement of the prohibition of intoxicating liquors for beverage purposes; and,

(3) That the legislature recognizes the fact that alcohol as used in the arts as distinguished from alcohol in intoxicating liquors is a legitimate article of trade.

We therefore are of the opinion that persons, firms and corporations holding permits from the United States Government for the manufacture of alcohol for industrial and scientific purposes within the State of Colorado are conducting a lawful enterprise and are not operating in violation of any existing laws of our state or of Article XXII of our Constitution.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

4 PUBLIC FUNDS

To C. S. Ickes, Feb. 11, 1931.

Collateral securities delivered to a county treasurer by a bank to secure the deposits of public moneys in such bank, should be held

in escrow by a national bank or by a trust company organized and doing business under the laws of the state. The county treasurer has no right to accept and hold such securities personally. (Chap. 83, S. L. 1927.)

5 **PAUPERS**

To Commission for Blind, Feb. 19, 1931.

Both the state and county may recover from the estate of a deceased pauper who has been given relief, providing the property constituting the estate was acquired before application for relief was made.

6 **PURE FOOD LABELS**

To Simeon H. Loeb, Feb. 27, 1931.

Food products containing glucose or corn sugar must be put on the market in packages with a label showing the presence thereof. Any rules of the Pure Food Commissioner to the contrary would be ineffective. (Sec. 956, C. L. 1921.)

7 **INCOME TAX LAW**

To Hon. Rudolph Johnson, March 2, 1931.

Discussion of proposed income tax law.

8 **AGRICULTURAL COLLEGE**

To Paul P. Newlon, March 3, 1931.

Non-resident students who have joined the State National Guard, and who give their residence as Fort Collins, still continue to be non-resident students so far as tuition fees to the State Agricultural College are concerned.

9 **SCHOOLS**

To J. H. Wilson, March 8, 1931.

The public school income fund must be apportioned among the several counties of the state in proportion to the school population. (Sec. 8280, C. L. 1921.)

All persons between the ages of six and twenty-one years, committed to the State Home for Mental Defectives, are still residents of, and entitled to enumeration in the school census of the counties from which they were committed.

10 **TAXATION**

To Colorado Tax Commission, March 9, 1931.

A mutual water company which owns artesian wells and supplies water to consumers for domestic purposes, is a public utility and not exempt from taxation. (Sec. 3, Art. X, Colo. Const.; Sec. 6372, C. L. 1921.)

11 **BUDGET COMMISSIONER**

To J. A. Bixby, March 10, 1931.

Under Sec. 308, C. L. 1921, the Governor, acting through the Budget and Efficiency Commissioner, is authorized to call for monthly trial balance statements from all state institutions and departments.

12 **MILITARY DEPARTMENT**

To Col. Paul P. Newlon, March 21, 1931.

Under Militia Bureau Circular No. 7, April 9, 1930, officers' armory drill pay checks may not be held for property shortage which occurred before the payroll was made up, and on which such checks were based.

13 **PENITENTIARY**

To Bishop Irving P. Johnson, March 21, 1931.

The Colorado Board of Corrections has no authority to enter into contracts to use convict labor for private work upon farm lands.

14 **DISTRICT ATTORNEYS**

To Carlton T. Sills, March 21, 1931.

There is no law, either constitutional or statutory, prohibiting a person from holding the offices of county attorney and deputy district attorney at the same time; but the district attorney has the authority to call for the resignation of such deputy if he so desires.

15 **WORKMEN'S COMPENSATION**

To Industrial Commission, April 1, 1931.

Under Section 50 of the Workmen's Compensation Act (Sec. 4424, C. L. 1921), a farmer who enters into a contract for the threshing of his own grain upon his own farm, with threshing machine operators who travel from farm to farm, is not liable for injuries. (Citing Ind. Com., et al. v. Shadowen, 68 Colo. 69; Hoshiko v. Ind. Com., et al. 83 Colo. 556.)

16 **ELECTIONS**

To Charles L. Harrington, April 2, 1931.

Article XIV, Section 12 of the State Constitution, prescribes the term for which municipal officers may be elected. City aldermen are municipal officers and cannot be elected for a term exceeding two years. (Citing Walsh v. People, 72 Colo. 406, 409.)

17 COUNTY OFFICERS

To Claude H. Rees, April 4, 1931.

Under Section 30 of Article V of the State Constitution, when a county is re-classified and placed in a lower class, the salaries of the county officers during their present terms cannot be reduced. (Citing Henderson v. County of Boulder, 51 Colo. 366.)

18 BANKS AND BANKING

To Grant McFerson, April 4, 1931.

A partnership deposit in an insolvent bank cannot be set off against the indebtedness of one of the individual partners.

April 4, 1931.

Hon. Grant McFerson,
State Bank Commissioner,
State Office Building,
Denver, Colorado.

Dear Mr. McFerson:

Sometime ago you discussed with me the question as to whether or not in liquidating the affairs of an insolvent bank, you would be justified in allowing a partnership deposit in the bank to be set off against indebtedness of one of the individual partners to the bank, or whether a partnership deposit could be set off against an indebtedness owed the bank by another co-partnership where the respective co-partnerships involved had a common member. Section 2734, Compiled Laws, 1921, which is Section 79 of the Banking Act, reads as follows:

> "Deposits of all persons indebted to any bank in the possession of the state bank commissioner, whether such indebtedness is due or to become due, shall be by him applied on account of such indebtedness."

It will be noted that this section does not settle the question of the right to set off a joint demand against a several demand, or of the right to set off one joint demand against another joint demand where such demands are not mutual.

The general principle is that demands cannot be set off against each other unless they are mutual.

In Fralick vs. Coeur d'Alene Bank & Trust Company, 35 Idaho 749, 208 Pac. 835, 27 A. L. R. 110, the court held that in liquidating an insolvent bank a partnership deposit could not be set off against the indebtedness of one of the co-partners to the bank. To that case as reported in 27 A. L. R. there is appended

an exhaustive note reviewing many court decisions upon this general subject. It there appears that the rule is universally recognized that in actions at law demands, in order to be set off against each other, must be mutual. Some courts have held that where there are special equities existing, set offs may be allowed where the demands are not mutual. Thus there is a line of Pennsylvania decisions, and some cases decided by other courts, to the effect that a partnership demand may be set off against an individual demand where the other member or members of the partnership assent thereto. However, the reasoning of those cases is by no means satisfactory.

Without discussing this matter in detail, I have come to the conclusion that the safest course for you to pursue would be to deny the set off in the particular case in question and let the matter be determined by the courts.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.
By CHARLES ROACH,
Deputy Attorney General.

19 SCHOOLS

To K. W. Geddes, April 8, 1931.

When the school census of a first class district falls below 1000, the district automatically becomes a second class district.

20 FOOD INSPECTION

To W. R. Freeman, April 9, 1931.

The State Dairy Commissioner may regulate advertisements and the sale of bakery goods containing products, the name of which might mislead the public.

21 CONVICTS

To F. E. Crawford, April 9, 1931.

Good time allowances under Sec. 757 of C. L. 1921 as amended by Ch. 69 of the 1931 S. L., does not revert back prior to the passage of the act.

22 INCOME TAX LAW

To Rudolph Johnson, April 9, 1931.

The legislature has power to enact an income tax law providing uniform rates of taxation as to all individuals and corporations; also an income tax law providing uniform rates for corporations and a graduated scale of rates for individuals.

April 9, 1931.

Hon. Rudolph Johnson,
Hon. Moses E. Smith,
House Chamber,
Capitol Building,
Denver, Colorado.

Gentlemen:

In your letter of the 7th inst. you ask the opinion of this department upon the following questions:

> "First. Has the legislature authority to adopt a net income tax in uniform or graduated rate or both? That is, can the legislature adopt a uniform rate on all incomes, or a uniform rate on the net income of corporations, and a graduated rate on the net income of individuals?
>
> "Second. Has the legislature authority to use the proceeds from an income tax for state, county, school, road and municipal purposes?
>
> "Third. Has the legislature authority to provide reasonable exemptions from a state income tax, like living expenses of $1000.00 for a single person, $2000.00 for a married couple and $400.00 for each child?"

You will, of course, understand that no opinion of this office upon the above questions would be final or binding upon anyone, but that such questions would have to be determined by the courts, in the event an income tax law were adopted and the questions raised. You will further realize that this office has not had time to thoroughly brief these questions and therefore our answers thereto are based upon such hurried investigation as we have been able to make.

Answering your first question, we advise you that in our opinion the General Assembly has power to enact an income tax law providing uniform rates of taxation as to all individuals and corporations. We are further of the opinion that an income tax law providing uniform rates for corporations and a graduated scale of rates for individuals would be upheld by our courts. We find that the courts of several states, whose constitutions contain a uniformity clause similar to our Section 3 of Article X, have nevertheless ruled that their legislatures may adopt income tax laws with a graduated scale of rates. These decisions are based largely upon the proposition that the uniformity clause applies only to *ad valorem* taxation of property and that income taxes are in the nature of excise taxes rather than property taxes. The Supreme Court of the United States, however, has held that an income tax is a "direct tax" on property and it is possible that our Supreme Court would take the same view, although we are inclined to the

opinion, as above stated, that it would follow the state decisions above mentioned.

Answering the second question above quoted, we advise you that our Supreme Court has held that our constitutional provision (Section 7 of Article X) prohibiting the General Assembly from levying taxes for certain local purposes has reference only to property taxes and does not apply to excise taxes. Since, as above stated, our courts would probably hold that an income tax is an excise tax rather than a property tax, it would follow that our courts would also hold that the proceeds of such a tax might be used for local purposes.

Answering your third question above quoted, we advise you that while Sections 3, 4, and 5 of Article X of our Constitution enumerate certain exemptions from taxation and Section 6 of the same article declares that all other exemptions shall be void, we are of the opinion that said Section 6 only prohibits exemptions from *ad valorem* taxation of property, and since, as above pointed out, our courts would probably hold that an income tax is an excise tax rather than a property tax, they would also probably hold that any reasonable exemption from such an excise tax might be allowed.

It hardly need be said that it is highly desirable that a constitutional amendment be adopted definitely settling all of the above questions, and also clearly authorizing the exemption of intangible personal property from *ad valorem* taxation or providing for its taxation at a lower rate than that applicable to other forms of property.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

By CHARLES ROACH,
Deputy Attorney General.

23 INSURANCE DIVIDENDS

To Jackson Cochrane, April 16, 1931.

Dividends paid to policyholders in mutual insurance companies are not deductible from the gross premiums before the imposition of the tax imposed by Sec. 16, Ch. 99, S. L. 1913. (Citing Cochrane vs. National Life Insurance Co., 77 Colo. 243.)

24 PUBLIC OFFICERS

To Governor Adams, May 1, 1931.

The position of Lieutenant Governor, which is a public office, and the position of Secretary to the Governor, which is not a public office, but an employment, are not incompatible, and may be held by the same person at the same time.

May 1, 1931.

Hon. William H. Adams,
Governor of Colorado,
Capitol Building,
Denver, Colorado.

Dear Governor:

You have requested my opinion upon the question as to whether or not the Lieutenant Governor of this State, during his incumbency in such office, can lawfully hold the position of Private Secretary to the Governor.

In Section 1 of Article IV of the State Constitution the Lieutenant Governor is named as one of the executive officers of the state government. Section 13 of the same article provides, in substance, that in the event of the death, resignation or disability of the Governor, the powers of his office shall devolve upon the Lieutenant Governor. Section 8 of Article V of the Constitution provides that:

> "No senator or representative shall, during the time for which he shall have been elected be appointed to any civil office under this state; * * *."

Section 30 of the same article, as amended in 1882, fixed the salary of the Governor at $5,000.00 per year and allowed him "the further sum of fifteen hundred dollars for the payment of a private secretary." The Constitution, as originally adopted, contained no mention of the position of private secretary. In 1928, said Section 30 was again amended and as so amended provides, *inter alia*, as follows:

> "The salaries of the Governor, the Governor's Secretary, and the Judges of the Supreme and District Courts of the State shall be fixed by legislative enactment; * * *." (S. L. 1927, page 758.)

Section 44, page 236, Compiled Laws, 1921, provides that:

> "The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive; and he shall keep a secretary at said office during his absence."

The rule is well settled that two public positions may be held by the same person at the same time if they are not incompatible in fact or in law. Public positions are incompatible in law when some constitutional or statutory provision declares that the same cannot be held by one person at the same time, or when the duties of the two positions are such that it would be inconsistent for one person to occupy them both as, for instance, where the incumbent of one position is vested by law with direction or supervision over the conduct of the incumbent of the other.

The above constitutional and statutory provisions are the only ones having any bearing upon this question and it readily appears that none of them raise a legal incompatibility between these two positions. Section 30 of Article V has no application because the Lieutenant Governor is not a senator or a representative but, on the contrary, is declared by Section 1 of Article IV to be a member of the executive department of the state government. Moreover, the position of Private Secretary to the Governor is not an office at all, but an employment. Courts have many times had under consideration the distinction between a public office and a public employment. The usual *indicia* of a public office are:

(a) That the position is created by statute or by the Constitution;

(b) That the duties of the position are defined by statutory or constitutional law and include the exercise of a part of the sovereign power of government;

(c) That the tenure of office is fixed by law;

(d) That an oath of office is required; and,

(e) That an official bond is required.

Applying these tests to the position of Private Secretary to the Governor, we find that these characteristics of a public office are wholly absent, except that the position is named in the Constitution. So we are clearly of the opinion that the position in question is not a public office, and even though it were, the Lieutenant Governor would not be ineligible to hold it because of any prohibition contained in our Constitution or statutes.

Neither are the two positions in question incompatible in fact. Offices are incompatible in fact where because of their respective duties it would be physically impossible for the same person to perform the duties of both positions. It might be said that these two positions would be incompatible during a session of the General Assembly because then the Lieutenant Governor would be quite fully occupied with the duties of that office and probably could not adequately perform the duties of private secretary also, but after the adjournment of the General Assembly the Lieutenant Governor has no duties as such to perform that would render him incapable of performing the duties of Private Secretary to the Governor.

For all of the above reasons and others which might be elaborated upon, I am clearly of the opinion that there is no legal objection whatsoever to the Lieutenant Governor holding the position of Private Secretary to the Governor.

Permit me to add that, in my opinion, there would not be the slightest impropriety in the Lieutenant Governor continuing to draw the salary of such office should he accept the position of Private Secretary and receive the compensation allowed by law for that position. This follows from the conclusion already stated

that the two positions are not incompatible in fact or in law and where two public positions may lawfully and properly be held by the same individual, it would follow as a necessary corollary that the salary of each could properly be received by the incumbent of both.

Respectfully yours.

CLARENCE L. IRELAND,
Attorney General.

25 PROBATE FEES

To Clarence M. Smith, May 1, 1931.

Under Ch. 80, S. L. 1929, as amended by Ch. 79, S. L. 1931, docket fees, when paid, are a credit on all other fees provided in said act, except in first class counties, in which case they are added to all the other fees required thereby.

26 INSURANCE

To Jackson Cochrane, May 7, 1931.

Under Sec. 2500, C. L. 1921, a company which writes insurance against damage by fire, lightning, tornado, earthquake, hail, etc., mentioned in the first paragraph thereof, cannot write plateglass insurance except as it is incidental to the insurance upon buildings against loss or damage arising from the contingencies mentioned in said paragraph one.

27 SCHOOLS

To True Wilson, May 8, 1931.

A school board in a third class district cannot dispose of a school house without a vote of the electors of the district. (Sec. 8333, C. L. 1921.) It is not necessary that such sale be specified in the notice of election.

28 SCHOOLS

To Inez Johnson Lewis, May 9, 1931.

Vacancies in a union high school committee, arising through the expiration of the terms of office of existing members of such committee, should be filled in the same manner as the original appointments were made, namely, at a joint meeting of the members of the respective local boards, whereat a majority of the members of each board are present, and which meeting shall have been called by the county superintendent upon the request of the secretaries of at least two of the local districts embraced in the new high school district.

29 PROBATE FEES

To John H. Simpson, May 11, 1931.

Under Ch. 80, S. L. 1929, testamentary trustees are not required to pay a new docket fee.

30 MILITARY DEPARTMENT

To Governor Adams, May 11, 1931.

The designation of employees by the Adjutant General is subject to the approval of the Military Board and the Governor, and once they are employed, they may be discharged only upon the approval of the Military Board and the Governor.

May 11, 1931.

Hon. William H. Adams,
Governor of the State of Colorado,
Capitol Building,
Denver, Colorado.

My dear Governor:

We have your letter of the 4th inst. asking our opinion "as to the proper procedure in ordering the discharge of employees under the existing National Guard regulations."

Section 203, Compiled Laws, 1921, provides:

> "The adjutant general of the state of Colorado is hereby authorized to *employ* clerks and such other force as may be required for the adjutant general's office and other departments, and armories of the national guard of Colorado, who shall be members of the national guard; the commanding officer of each department to make the recommendation for his respective department; *provided*, that the *pay* of such clerks and other force shall be determined and fixed by the military board."

The word "employ" as used in this section is used in a restricted sense because there is a condition of recommendation and the fixing of the pay by the military board which is analogous to the provision of law that "the Governor shall appoint by and with the consent of the senate." In other words, the Adjutant General under the foregoing section is authorized to engage clerks and such other force upon the recommendation of a department commander and the determination and fixing of the pay by the military board. Hence such employment is a joint act.

The right to employ carries with it the right to discharge, and since the right to employ, as defined in the statute, is restricted, it would likewise follow that before any employee engaged in the military department could be discharged, the consent of the military board must be secured.

The employment of *all officers*, as clerks or such other force

in the national guard, is determined by Section 184, C. L. 1921, which provides that:

> "The *compensation of all officers* when on duty *by order of the governor* shall be the same pay and allowance as is paid to officers of like grade in the regular army of the United States, including longevity pay for federal and national guard service, except commutation of heat, light and quarters. Provided, heat, light and quarters will be furnished when on field duty."

Several sections of the Constitution and laws of Colorado have a bearing upon the question submitted.

The bill of rights, Article II, Section 22, provides:

> "That the military shall always be in strict subordination to the civil power; * * *."

The Governor is the executive head of both the military and civil power of the State. The Governor shall be commander-in-chief of the military forces of the State. (Article IV, Section 5, Constitution.)

The Supreme Court in the case of *People, upon the relation of Boatright, vs. Newlon*, 77 Colo. 516, quoting from page 524, holds that: "There is no such office or position" as "civil adjutant general." That wherever a state adjutant general who has complied with federal regulations is denominated, it means "a military adjutant general."

The Governor shall appoint all general, field and staff officers and commission them. (Article XVII, Section 3, Constitution.)

Section 182, C. L. 1921, provides:

> "That the governor shall be commander-in-chief of the organized militia except when called into the service of the United States, *and he shall appoint the adjutant general who shall be chief of staff;* provided that the adjutant general shall have served as a field or line officer in the United States army or national guard and attained the rank of major."

Section 183 also provides:

> "The adjutant general and all general, field and staff officers shall be appointed by the governor. The adjutant general and all officers shall be appointed as provided for in national guard regulations."

Section 204 further provides:

> "The state military board shall consist of the governor, the adjutant general, the quartermaster, the judge advocate and the senior line officer on the active list pres-

ent for duty. It shall prescribe such regulations not inconsistent with law as will increase the discipline and efficiency of the national guard. These regulations as prepared by the military board and approved by the governor shall be published *in orders, and the governor may, whenever in his judgment it is necessary, order said board to revise and amend said regulations and to consider all other matters concerning the national guard.*"

Section 207 provides:

"That the national guard of the state shall be governed by the military law of the state, *the orders of the governor,* and by the laws, regulations and customs governing the United States army."

From an analysis of the foregoing sections it appears that the Governor is the commander-in-chief of the military of the State; that he appoints the Adjutant General and that the Adjutant General is the chief of staff; that the Governor has the right under Section 204 to order the military board to revise or amend the regulations, and if he so desired he might under such an order provide regulations which would further restrict the statutory right of the Adjutant General to "employ" and engage clerks as provided in Section 203.

The Adjutant General, being chief of the staff, is subject to the orders of the Governor at all times. Section 199 provides:

"The adjutant general *shall* distribute all orders from the commander-in-chief; *he shall be the organ of all communications from the national guard to the commander-in-chief;* and shall attend him whenever ordered in the performance of duty; he *shall obey and issue such orders as the commander-in-chief shall give in relation to all military matters,* * * *."

Hence, the Adjutant General acts as an arm of the Governor in military matters and he must *obey* such orders as the Governor issues in relation to military affairs. This a wise provision of law. Otherwise, if the Adjutant General were permitted to have a free hand in the employment of clerks and other forces, without legal restraint, he could disobey the orders of the Governor under any and all circumstances, contrary to the law and the orderly administration of the various military departments.

It is therefore the opinion of this office, although the Adjutant General has the right upon the recommendation of the commanding officer of each department to designate those who shall be employed in his office and in the various military departments and armories, that such designation is subject to the approval of the military board and the Governor as commander-in-chief; that em-

ployees once engaged and employed, as above outlined, may be discharged only upon approval of the military board and the Governor.

Very truly yours,
CLARENCE L. IRELAND,
Attorney General.
By GEORGE A. CROWDER,
Assistant Attorney General.

31 CITIES AND TOWNS

To J. H. Galbreath, May 12, 1931.

The right of a town to limit speed, within its corporate limits, of vehicles traversing streets which are a part of the state highway system, is a police power given to towns by statute, which is not abrogated by the fact that the streets in question become a part of the state highway system. (Ch. 173, p. 2291, C. L. 1921, Sec. 15, par. 7.)

32 HIGHWAYS

To Claude Semones, May 13, 1931.

Colorado has no statute prohibiting the driving of stock upon public highways. Section 3160, C. L. 1921, provides that where stock is running at large upon a fenced public highway, a person is not liable in damages for injury to such stock unless the damage was wilfully inflicted.

33 ALCOHOL

To Chas. M. Armstrong, May 13, 1931.

Before a wholesale dealer in this State would be entitled to a license from the State to purchase and sell alcohol as a wholesale dealer, he must first comply with Title III of the National Prohibition Act, and the Regulations of the Commissioner of Industrial Alcohol pursuant thereto, and qualify himself as a manufacturer or wholesale druggist.

May 13, 1931.

Hon. Chas. M. Armstrong,
Secretary of State,
Denver, Colorado.

Dear Sir:

This is to acknowledge your letter requesting an opinion from this office on the enclosed letter of Mr. German E. Ellsworth, Supervisor of Permits, Federal Bureau of Alcohol, dated April 7, 1931, in regard to the issuance of a state alcohol license to the Colonial Drug and Sales Company.

We assume from Mr. Ellsworth's letter that the Colonial Drug and Sales Company cannot qualify as a wholesale druggist, as defined by Section 1501 (e), Regulations 2, relating to intoxicating

liquors and alcohol, issued by the United States Treasury Department, effective April 1, 1931, for the reason that the Colonial Drug and Sales Company does not carry a stock of representative pharmaceuticals and such other articles and materials in such assortments and quantities as will enable it regularly to supply from stock, from day to day, the usual and immediate medical requirements of retail druggists, etc.

In answering Mr. Ellsworth's letter, it is necessary to refer to the history of the respective acts of the United States and of the State of Colorado concerning alcohol. The State of Colorado prohibited the use of intoxicating liquors for beverage purposes prior to the passage of the Eighteenth Amendment of our United States Constitution. Our Colorado Legislature likewise passed an Act regulating the purchase and sale of *alcohol* in 1917, which also was prior to the passage of the Eighteenth Amendment.

By the enactment of the Eighteenth Amendment, the several states delegated to the United States the right to prohibit, regulate and control the manufacture, sale or gift of intoxicating liquors.

The Congress, in order to prohibit the manufacture and sale of intoxicating liquor for beverage purposes deemed it necessary to regulate the manufacture, sale and use of alcohol. The United States Supreme Court has sustained such legislation.

> "The power of the Federal Government, granted by the Eighteenth Amendment, to enforce the prohibition of the manufacture, sale and transportation of intoxicating liquor carries with it power to enact any legislative measures reasonably adapted to promote the purpose. The denaturing in order to render the making and sale of industrial alcohol compatible with the enforcement of prohibition of alcohol for beverage purposes is not always effective. The ignorance of some, the craving and the hardihood of others, and the fraud and cupidity of still others, often tend to defeat its object. It helps the main purpose of the Amendment, therefore, to hedge about the making and disposition of the denatured article every reasonable precaution and penalty to prevent the proper industrial use of it from being perverted to drinking it."
>
> *Selzman v. United States,* 268 U. S. 466, 468.

Title III of the National Prohibition Act deals with Industrial Alcohol. Section 13 of said Title III gives to the Commissioner of Industrial Alcohol the powers from time to time to promulgate and issue regulations respecting the establishment, bonding and operation of industrial alcohol plants, denaturing plants, and bonded warehouses and for the distribution, sale, export, and use of alcohol which may be necessary, advisable or proper, to secure the

revenue, to prevent diversion of the alcohol to illegal uses, and to place the non-beverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purposes upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the Government, and which will insure an ample supply of such alcohol and promote its use in scientific research and the development of other lawful products.

Pursuant to said authority the Commissioner of Industrial Alcohol has promulgated certain regulations pursuant to Title III, and are, as far as pertinent here, as follows:

Section 10 (e) page 3, Reg. 2.

"'Alcohol' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or process produced, having a proof of 160 degrees or more, and does not include the substances commonly known as whisky, brandy, rum, or gin."

Section 1301, page 112, Reg. 2.

"*Alcohol—Wholesale and retail dealers in*—Alcohol, as defined in section 10 (e), may be sold in wholesale quantities, by *manufacturers* and *wholesale druggists* (as defined in sections 1501 (a) and 1501 (e), and at retail by retail druggists (See Art. XVI), under proper basic permits, and pursuant to permits to purchase when and as required by these regulations."

Section 1501 (a), page 127, Reg. 2.

"'*Manufacturer*' means a person who produces liquor in this country, or who has so produced liquor to which he has title or which remains in bond, or another who succeeds to, purchases, or acquires the business of such person, and shall include the proprietor of a concentration warehouse having the privilege of selling under these regulations."

Section 1501 (e), page 128, Reg. 2.

"'*Wholesale druggist*' means a person who is engaged in the business of selling at wholesale a representative assortment of pharmaceuticals and other articles and materials such as drugs, oils, chemicals, proprietary medicines, and druggists' sundries, and who carries a stock of representative pharmaceuticals and such other articles and materials in such assortments and quantities as will enable him regularly to supply from stock, from day to day, the usual and immediate medical requirements of retail druggists, pharmacists, physicians, hospitals, and

dispensaries, and who is duly qualified under the laws of the State in which he does business to carry on such business."

Since the Prohibition Commissioner pursuant to an Act of Congress has seen fit to regulate the sale at wholesale of alcohol to manufacturers and wholesale druggists, defined as above set forth, it then becomes necessary to interpret the State law providing for the sale and purchase of alcohol in conformity with such national legislation and regulations.

The 1917 Alcohol Act of the State of Colorado regarding the purchase and sale of alcohol does not purport to define wholesale dealers. Since, however, the Commissioner of Industrial Alcohol, pursuant to an Act of Congress, has limited the wholesaling of alcohol to manufacturers and wholesale druggists, as defined by regulations, as above set forth, it then becomes necessary to ascertain whether or not there is any conflict between the national laws and the State laws, and in my opinion there is such a conflict, and the State law must give way to the Federal law in such conflict pursuant to the following authorities:

"The only question is whether the state law is appropriate legislation and such legislation must be consistent with prohibition, not hostile to it, must help not hinder, support not defeat, promote prohibition and not thwart it. License and local option laws or at all events the license features of such laws are inappropriate as they are inconsistent with prohibition. On the other hand, prohibitory laws while differing from one another in definitions, procedure, and in penalties are appropriate. In case of irreconcilable conflict between state and federal statutes pending final decision by the Supreme Court of the United States, state courts must treat the Federal statutes as supreme."

486 Blakemore on Prohibition, Third Edition 1927, p. 24.

"*State and Federal Legislation on Same Subject.*—In construing the statute of a state, the courts, in determining the intention of the legislature in enacting the statute, are in many cases to consider the acts of Congress upon the same and kindred subjects. The acts of Congress, when within the scope of powers delegated by the states to the federal government, are the statute law and the higher statute law of the several states, and are enforced by their courts, in matters of which they have jurisdiction, as fully as their own statutes, without being specifically pleaded or proved. Where two governments like those of the United States and one of the states exercise their authority within

the same territory and over the same citizens, the legislation of that which as to certain subjects is subordinate should be construed with reference to the powers and authority of the superior government, and not be deemed as invading them, unless such construction is absolutely demanded."

25 R. C. L. (Statutes), Section 278, p. 1053.

"* * *

Although in a measure independent, the United States is not as to one of the states a foreign nation, and the state courts are required to give to the statutes of the United States the same recognition, force, and effect accorded the laws of the states;"

36 Cyc. (States), p. 831-832.

"Effect of Federal Amendment and Legislation upon Preexisting Statutes. The provisions of the state liquor laws, which are not inconsistent with the Eighteenth Amendment or the National Prohibition Act, but which tend fairly to the enforcement of such amendment, are not repealed or superseded by such amendment or act, but remain unimpaired and may be enforced by the state courts, for such provisions, if they would constitute appropriate legislation for the enforcement of such amendment, if enacted after its adoption, are not less appropriate because in existence at the time of its adoption. On the other hand, all the provisions of state liquor laws which sanction what the Eighteenth Amendment prohibits or which are repugnant to, or in conflict with, the National Prohibition Act, are superseded or repealed."

33 C. J. Intox. Liquor, Sec. 31.

It therefore follows that a wholesale dealer in alcohol in this state must first comply with Title III of the National Prohibition Act and Regulations of the Commissioner of Industrial Alcohol pursuant thereto and qualify himself as a manufacturer or wholesale druggist before he would be entitled to a license from the State of Colorado to purchase and sell alcohol as a wholesale dealer, pursuant to Chapter I of the 1917 Session Laws of the State of Colorado relating to the purchase and sale of alcohol.

As heretofore stated, the Colonial Drug and Sales Company is not so qualified as such manufacturer or wholesale druggist and therefore is not entitled to a license from the State of Colorado.

I am advised that a license has been issued to the Colonial Drug and Sales Company for the year, beginning May 1, 1931, by the Secretary of State and that a license has been issued to said Company for several years past.

Such license so issued, however, is a nullity and void for any purpose and the Secretary of State should notify the Colonial Drug and Sales Company that said license has been revoked. In my opinion it is not necessary to take any particular action to cause said license to be returned, but the Supervisor of Permits at Denver, Colorado, Mr. German E. Ellsworth, should be notified and requested to ignore the license so issued for the year beginning May 1, 1931.

Respectfully submitted,

CLARENCE L. IRELAND,
Attorney General.

34 WATER COMMISSIONER

To Ray Boston, May 13, 1931.

A water commissioner may dismiss a deputy, holding the position under a provisional appointment without having taken the Civil Service Examination, subject to the approval of the Civil Service Commission, and without the consent or approval of the Board of County Commissioners of the county where such deputy is employed. (Ch. 134, S. L. 1923; Civil Service Commission v. Cummings, 83 Colo. 379.)

35 INSURANCE

To Jackson Cochrane, May 14, 1931.

No mutual company organized under the provisions of Ch. 42, C. L. 1921, shall be licensed to do business until it has applications for, or in force, insurance upon not less than two hundred separate risks with not less than twenty policies to at least twenty members upon the same kind of insurance.

36 INTOXICATING LIQUOR

To Charles M. Armstrong, May 14, 1931.

Under Sec. 3715, C. L. 1921, providing for use of intoxicating liquors for medicinal and sacramental uses, a permit is not only necessary to purchase, but also to use such intoxicating liquor for church purposes; and even if the applicant does not wish to purchase during the year, he must secure a permit for the use of such liquor required in the religious services of the church, and continued use without such permit is in violation of the law.

37 CORPORATION LAW

To Chas. M. Armstrong, May 15, 1931.

On or before May 1, 1931, the Secretary of State should collect a penalty of 10% for the first six months or fractional part thereof, from every corporation which has failed to pay the tax provided for by Sec. 7270, C. L. 1921. After the expiration

of the first six months, Sec. 26 of Ch. 70, S. L. 1931, becomes effective.

38 OLEOMARGARINE

To Governor Adams, May 15, 1931.

Sec. 2 of H. B. 10, being Sec. 2 of Ch. 127, S. L. 1931, violates Sections 3 and 6 of Art. X of the State Constitution. Other sections of the act are constitutional.

The legislature cannot destroy one industry for the purpose of protecting another.

May 15, 1931.

Hon. William H. Adams,
Governor of Colorado,
Capitol Building,
Denver, Colorado.

My Dear Governor:

Pursuant to your request for an opinion as to the constitutionality of House Bill No. 10, adopted by the last General Assembly, please be advised as follows:

The Attorney General is of the opinion that in matters of this kind he would not be warranted and justified in rendering an opinion to the effect that an act was unconstitutional unless he was convinced beyond all reasonable doubt of its unconstitutionality. In cases of doubt, however, the final responsibility of passing upon the constitutionality of a statute rests upon the courts. See:

6 R. C. L. 71;
2 R. C. L. Supp. 15;
4 R. C. L. Supp. 377;
5 R. C. L. Supp. 317.

I have given considerable study to said House Bill No. 10, and particularly to Section 2 thereof, which reads as follows:

> "Section 2. There is hereby imposed an excise tax of fifteen (15) cents per pound on all oleomargarine sold, offered for sale or exchanged in the State of Colorado, *except oleomargarine that contains forty-five per cent or more of animal fats, with a two per cent tolerance, not including fish oils or fish fats.* Such excise tax shall be payable by all manufacturers or wholesale dealers of or in oleomargarine sold, offered for sale or exchanged in the State of Colorado, and shall be evidenced by stamps secured from the State Dairy Commissioner and affixed to each case at the rate of fifteen (15) cents per pound for each pound contained therein. In the event the tax above provided for is not paid by the wholesaler or jobber as shall be evidenced by the affixing of a stamp under the provisions of this Act, then it shall be the duty of the retailer selling oleomargarine to stamp each pound pack-

age with stamp obtained under the provisions of the Act and affixed to the package."

It will be noted that Section 2 provides for an excise tax of fifteen cents per pound on all oleomargarine, except oleomargarine which contains forty-five per cent or more of animal fats, with a two per cent tolerance, not including fish oils or fish fats.

The courts have uniformly held that the legislature has a right to classify subjects within its jurisdiction for the purpose of making laws relating to taxation for public purposes; that right to classify, however, can only be exercised in subordination to certain constitutional restrictions. The legislature cannot, by arbitrary discrimination, subject certain property to taxation and exempt other property of the same kind and class and similarly situated from an equal burden. There must be a substantial difference and a distinction that is just and reasonable.

Article X, Section 3, of the Constitution of the State of Colorado, provides, in part, as follows:

> "Uniform taxation—Individual exemption. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; * * *."

Article X, Section 6, of the Constitution, provides:

> "All laws exempting from taxation, property other than that hereinbefore mentioned shall be void."

The question therefore is, whether or not Section 2 of House Bill No. 10 is in violation of either Section 3 or Section 6 of Article X of the Constitution of the State of Colorado above quoted; whether or not it is a uniform tax as required in Section 3, Article X, and whether or not it is an improper or void exemption in violation of Section 6, Article X, of said constitution.

To determine the answers to these questions, it is necessary to examine the bill as a whole and to ascertain therefrom whether or not such classification as therein made is a reasonable classification, a just discrimination and not an arbitrary one. Nothing can be said in the bill as a whole giving any substantial reason for the classification made in Section 2. Not only does Section 2 place a tax upon oleomargarine made from vegetable fats without any reason therefor, but the classification is still more arbitrary in that it taxes certain oleomargarine containing animal fats of a certain percentage and exempts other oleomargarine containing animal fats of a larger percentage without giving any substantial reason therefor. One cannot gather from the bill, or otherwise, that said bill

is enacted to prevent any fraud, or to protect public health, public morals, public safety or to promote public welfare.

Courts take judicial notice of the fact that oleomargarine is a healthful and nutritious food. 15 R. C. L. 1130; 3 R. C. L. Supp. 540; Jelke Co. v. J. Q. Emery, State Dairy and Food Commissioner, 214 N. W. 369.

In the case of Jelke Co. v. State Dairy and Food Commissioner, *supra*, the court there held that the legislature cannot for the purpose of protecting the dairy industry against competition prohibit the manufacture or sale of oleomargarine. That question is only indirectly involved in this bill and can only be considered upon the basis that the tax imposed upon certain oleomargarine is so high that it prohibits the manufacture of the same. But in that case the court also held:

> "When the principal purpose of a statute is to advantage one class of citizens to the disadvantage of others, courts will look behind even the declared intent of the legislature, and relieve citizens against oppressive acts, where the primary purpose is not the protection of the public health, safety, and morals."

The statute there under consideration, however, was one prohibiting the manufacture of oleomargarine and not the taxation, and is only incidentally involved in this case.

Regarding the question of uniform taxation, whether or not the tax attempted to be imposed is an excise or revenue tax is immaterial, under the following authorities:

> "The provision requiring taxation to be equal and uniform is in such jurisdiction as apply it to excises at all construed as meaning, with reference to excises, that the burden imposed shall fall alike on all persons who are in substantially the same situation (29 La. Ann. 283, 29 Am. Rep. 328; 17 S. D. 486, 97 N. W. 463, 2 Ann. Cas. 321 and note.), a rule generally recognized even in the absence of an express constitutional requirement of uniformity."
>
> 26 R. C. L., Sec. 226, page 256.

> "The courts have not hesitated to strike down, as unconstitutional, excises purporting to establish a classification of subjects of taxation but which are really intended to drive out of business persons trading in a legitimate way but in such a manner as to outstrip their competitors, or which are intended to favor a particular class in the community. Simrall v. Covington, 90 Ky. 444, 14 S. W. 369, 29 A. S. R. 785, 9 L. R. A. 556."
>
> 26 R. C. L., Sec. 229, page 260.

In this connection I also desire to call your attention to the

case of Commonwealth v. Alden Coal Co., 96 Atl. 247 (Pa. Act of 1915). This case considered an act of the assembly of the State of Pennsylvania which imposed a tax upon anthracite coal and placed no tax upon bituminous coal. The Pennsylvania constitution contains the same language as used in Section 3, Article X, of our Constitution and was under consideration in that case. Said section reads:

> "All taxes shall be uniform upon the same class of subjects within the territory limits of the authority levying the tax."

The court held that act unconstitutional in the following language:

> "The right of the Legislature to classify subjects within its jurisdiction for the purpose of enacting laws is unquestioned; so, too, is its right to determine what things shall be subject to tax for public purposes; but in both instances the right can be exercised only in subordination to certain constitutional restrictions. The Legislature may no longer by arbitrary discrimination subject certain property to taxation, and exempt other property of the same kind and class and similarly situated from an equal burden. It may discriminate between two of a class in this respect by method of classification, but it can do this only when a substantial difference exists operating to make the distinction just and reasonable, and the legislation based thereon agreeable to something more than legislative notion of expediency. It must rest on a difference which bears a natural, reasonable, and just relation to the act in regard to which the classification is proposed; or, as stated by Mr. Justice Brewer in Gulf, Colo. & Santa Fe Ry. Co. v. Ellis, 165 U. S. 150, 17 Sup. Ct. 235, 41 L. Ed. 666, and quoted approvingly by Sterrett, C. J., in Juniata Limestone Col. Ltd. v. Fagley, 187 Pa. 193, 197, 50 Atl. 977 (42 L. R. A. 442, 67 Am. St. Rep. 579):
>
> " 'It must appear not only that a classification has been made, but also that it is one based upon some reasonable grounds—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.'
>
> "* * * When upon judicial revision it clearly appears that the classification adopted rests upon no substantial difference in the subject, that, whatever the difference, it bears no correspondence to the end and object of the act, the right and duty of the court to assert and maintain the supremacy of the Constitution, even though it means the defeat of the legislation, is too apparent to invite argument."

It is also a fundamental rule that the legislature is without power to destroy one industry for the purpose of protecting another. Bacon v. Walker, 204 U. S. 311, 51 L. Ed. 499; Weaver v. Palmer Bros. Co., 270 U. S. 402, 70 L. Ed. 654; Schollenberger v. Pennsylvania, 171 U. S. 1, 43 L. Ed. 49; Genessee Valley Milk Products Co. v. J. H. Jones Corp., 128 N. Y. Supp. 191.

COLORADO DECISIONS

The sections of our constitution hereinabove referred to have been interpreted in the following cases:

In Smith v. Farr, 46 Colo. 365, Judge Gabbert, in passing upon the validity of an itinerant vendors act, stated as follows:

> "The act exempts from its operation commercial travelers or agents selling to merchants in the usual course of business. This is a discrimination without any reason. An itinerant vendor, as defined by this act, may, without license, travel from place to place, carrying with him manufactured articles to sell to merchants, while another carrying the same article and traveling in the same way, is inhibited from disposing of his wares to the consumer direct unless he has paid a license fee for the privilege of making such disposition of his property in that way. A burden is imposed upon one itinerant vendor from which another is exempt. We can see no reason why one selling to the merchant may do so without paying a license fee while another, who sells the same article to a farmer, must pay that fee. In short, under the statute, one may enjoy a right which is denied another within the same jurisdiction in like circumstances. Commonwealth v. Snyder, 38 Atl. 356."

and also we quote:

> "So that while it is the province of the general assembly to determine in what instance the police powers of the state may be exercised, it is the province of the courts to determine whether or not an act based upon the assumption of such power is valid. In order to sustain legislation as a police measure, it must appear, as a general rule, that it tends in a measure to protect the public from some manifest evil State v. Ashbrooke, 55 S. W. 627. Classification adopted for legislative regulation, as held by the supreme court of the United States, in Gulf, Colo. & S. F. Ry. Co. v. Ellis, 165 U. S. 150, 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis.' Seaboard Airline Ry. Co. v.

Simon, 47 Southern 1001; Connolly v. Union Sewer Pipe Co., supra."

And also in Leonard v. Reed, 46 Colo. 307, Mr. Justice Gabbert, in a case involving the same act, said:

> "Tested by our constitution and the principles deducible therefrom, we find the law wanting in validity. It imposes a tax upon goods and merchandise brought into any county subsequent to the first day of May in any year for temporary lodgment and sale, and by necessary implication, relieves goods of a similar character brought into the same county at the same time from the burden of such tax if they be not placed upon the market. This discrimination robs the law of the indispensable requisite that taxes shall be uniform upon property within the jurisdiction of the body imposing them. If a certain character of property brought into a county for a particular purpose after the first day of May in any one year may be subjected to a tax, then all other property within the same jurisdiction of a similar character must be subjected to the same tax in order to satisfy the provision of our constitution on the subject of uniformity of taxation—Graham v. Commrs. of Chautauqua Co., 31 Kan. 473; County Commrs. v. Wilson, supra."

In Commissioners v. Owen, et al., 7 Colo. 467, at pages 468 and 469, it is said:

> "It is contended, and the county court held, that the last clause of the foregoing statute is void, because it is in violation of sections 3 and 6 of art. X of the state constitution. The former section of this instrument provides that: 'All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax,' * * *."
>
> "The latter declares that 'all laws exempting from taxation property other than that hereinbefore mentioned, shall be void.'
>
> * * * * * * * * * *
>
> "But realty and personalty within the corporate limits of a city or town are as much a part of the taxable property of the county as are farms and chattels outside such corporate limits. There seems to be no escape from the conclusion that a legislative declaration entirely exempting the former from payment of the tax in question is in conflict with the constitutional inhibition, and, therefore, void."

We also quote from the case of Ames v. People, 26 Colo. 83,

at page 107, which is applicable to the subject herein discussed, as follows:

> "To this we reply that the proviso of section 3 and sections 4 and 5 relate entirely to the exemption, partial or entire, of certain kinds of property *from* taxation; and it is inexact to say that exempting property from taxation is dividing it into classes *for* taxation. But it is clear that there is no attempt in this section to classify property for taxation. Certain exemptions, it is true, are therein provided for, but the only limitation contained in either section upon the method of taxing property that is subject to taxation at all is with respect to ditches, etc., when used in a certain way. In all other particulars, both with respect to the method of taxation and the classification of property for taxation, there is no restriction. So long as the discrimination is based upon the nature of use of property, justifying it, there is nothing to forbid the legislative classification for taxation of all species of property, except ditches, etc., mentioned in the section, or to prevent the fixing of the valuation of the different classes by different methods.
>
> "The uniformity and equality enjoined by the constitution require only that the same means and methods be applied impartially to all the constituents of each class, so that it operates equally and uniformly upon all persons and corporations in similar circumstances. Kentucky R. R. Tax Cases, supra; People v. Henderson, 12 Colo. 369."

We particularly direct your attention to the case of Carbon County Sheep and Cattle Co. v. County Commissioners of Routt County, 60 Colo. 224. In that case, a Wyoming corporation brought an action in the District Court of Routt County against the County Commissioners to recover taxes paid under protest, under the provisions of Section 5608, Revised Statutes of 1908, and Section 5763, Revised Statutes of 1908, the latter being part of the Session Laws of 1902, page 150. The section in question is as follows:

> "When any livestock is driven into a county for the purpose of grazing therein, at any time in any year, it shall be liable to be assessed for all taxes leviable in that county for that year, the same as if it had been in the county at the time of the annual assessment, and it shall be lawful for the county assessor in each county of the state of Colorado, *to assess cattle, sheep and horses*, as of any date such assessor may desire, providing that the same shall be assessed as of some day between the first day of January and the thirty-first day of December in each year."

This provision imposes a tax on livestock driven into a county for grazing purposes, except when such livestock consists of cattle, sheep or horses, which are declared taxable without reference to the purpose for which brought in and by necessary implication relieves from taxation for the current year all livestock, with the exception noted, brought into a county for other than grazing purposes, as well as all other personal property brought in, when not taxable as personal property therein on April 1st, under Section 5608, Revised Statutes of 1908. The court quoted with approval the case of County Commissioners vs. Wilson, 15 Colo. 90, as follows:

> "A statute which thus discriminates is clearly obnoxious to Section 3, Article X, of the Constitution, requiring uniformity in taxation, which implies equality in the burden of taxation."

And again on page 227:

> "When, as in this case, it is by its terms applicable to one class only of personal property brought into the state between those dates, and exonerates all other personal property brought into the state from the burden of taxation, the discrimination is so obvious that its unconstitutionality is at once apparent."

and cites the case of Leonard v. Reed, 46 Colo. 307, continuing as follows:

> "Tested by our constitution and the principles deducible therefrom, we find that the law wanting in validity. It imposes a tax upon goods and merchandise brought into any county subsequent to the first day of May in any year for temporary lodgment and sale, and by necessary implication, relieves goods of a similar character brought into the same county at the same time from the burden of such tax if they be not placed upon the market. This discrimination robs the law of the indispensable requisite that taxes shall be uniform upon property within the jurisdiction of the body imposing them. If a certain character of property brought into a county for a particular purpose after the first day of May in any one year may be subjected to a tax, then all other property within the same jurisdiction of a similar character must be subjected to the same tax in order to satisfy the provision of our constitution on the subject of uniformity of taxation. Graham v. Commrs. of Chautauqua Co., 31 Kan. 473, 2 Pac. 549."

The most significant part of the opinion, however, as applied to this statute, occurs beginning on page 229, whereat the court says:

"It is contended that the provision specifies a class, migratory livestock, and that the law is reasonable and not arbitrary respecting that class, and should stand. The contention is manifestly opposed to the conclusions reached in County Commissioners v. Wilson, supra, and Leonard v. Reed, supra, to the effect that any classification such as suggested by counsel is calculated to produce inequality and injustice. Furthermore, in the present case, *if it were necessary to so limit the question, the provision of the statute does not treat all livestock alike, certain kinds of livestock only are made liable under it, and this discrimination alone is sufficient to nullify the provision. Moreover, the statute discriminates between livestock brought into the state for grazing purposes and that brought in for other purposes, except as to cattle, sheep and horses.*

"No case is cited from this jurisdiction, or from any other having like constitutional and statutory provisions, nor has any plausible argument been offered, which challenges the soundness of the principles declared in the authorities above quoted, upon which this decision is based."

Applying the law in these decisions, and particularly the Colorado decisions, to House Bill No. 10 here under consideration, I am of the opinion that Section 2 of said oleomargarine bill is without question unconstitutional, and that it clearly violates Sections 3 and 6 of Article X of our Constitution.

I am further of the opinion that all other portions and sections of said bill are constitutional. Section 9 provides:

"If any section, subsection, paragraph, clause or phrase of this Act is held unconstitutional, the validity of the balance of this Act shall not be affected or impaired thereby."

Should the bill become a law, the remainder of the bill, in my opinion, would be upheld by the courts. The only question then remaining is, Whether the license fees provided for in Section 3 of said bill are sufficient to carry out the purposes of the act other than Section 2. That question, however, in the opinion of the Attorney General, is not serious and does not concern the constitutionality of the act.

Respectfully yours,

CLARENCE L. IRELAND,
Attorney General.

39 BUILDING AND LOAN ASSOCIATIONS

To Governor Adams, May 19, 1931.

S. B. 240, being Ch. 58, S. L. 1931, would probably be held constitutional by the Supreme Court.

The Supreme Court will not condemn an act of the General Assembly as unconstitutional, unless it is convinced beyond all reasonable doubt that the act is subject to such an infirmity. (Milheim v. Moffat Tunnel Improvement District, 72 Colo. 268.)

The Governor and Attorney General, as administrative officers, are justified in indulging in at least as strong a presumption as the Supreme Court, in behalf of an act of the legislative branch of the state government.

When the legislative journals are silent as to the form in which a bill was introduced, it must be presumed that the fundamental law on the subject of the passage of bills was in all respects followed. (Andrews v. People, 33 Colo. 393.)

All matters germane to the general subject of a bill are properly included therein. (Golden Canal Co. v. Bright, 8 Colo. 144.)

Statutes regulating building and loan associations have always been sustained as an exercise of the police power of the state and one of their obvious purposes is the protection of the small investor from fraud or imposition. (9 C. J., page 923, Sec. 8; Union Savings and Investment Co. v. District Court, 44 Utah 397; State ex rel. v. Massillon Savings and Loan Co., 110 O. St. 320.)

The title of a bill may be so amended as to conform to the purposes of the bill as extended by amendments. (In re Amendments of Legislative Bills, 19 Colo. 356.)

Where no constitutional requirement is omitted, clerical errors in the passage of a bill, are rarely allowed to defeat it. (The Mechanics B. & L. Association v. Coffman, 110 Ark. 269.)

Opinion by Mr. Charles Roach, Deputy Attorney General.

40 CITIES AND TOWNS

To Governor Adams, May 20, 1931.

S. B. 56, being Ch. 168, S. L. 1931, is constitutional. The only objection which might be urged against the bill is that the power given by said act to city councils to dispose of public property, might be abused. (Sec. 8988, C. L. 1921.)

41 CODE OF CIVIL PROCEDURE

To Governor Adams, May 20, 1931.

The amendment of the Code of Civil Procedure effected by S. B. 571 is designed to enable state courts to take advantage of Sec. 266 of the Federal Judicial Code and thereby acquire

jurisdiction to decide in the first instance questions concerning the constitutionality of state laws. Is undoubtedly constitutional.

42 COLLECTION AGENCIES

To Governor Adams, May 20, 1931.

Senate Bill No. 579, being Ch. 62, S. L. 1931, relating to collection agencies, is designed merely to clarify the Act of 1927 on that subject, and to require such agencies to give an annual rather than an indeterminate bond. The bill is undoubtedly constitutional.

43 COUNTY HIGH SCHOOL DISTRICTS

To Governor Adams, May 21, 1931.

S. B. 489, which makes it the duty of the district court to determine whether or not a high school district should be dissolved, and to determine the whole question as to whether the people of the county ought to have or can afford to support a county high school, is probably unconstitutional. (Citing Art. III, and Sections 2 and 15 of Art. IX of our State Constitution; Sections 8397 and 8422, C. L. 1921; Vol. 12 C. J., pages 810, 873-874, and 878-879; and Tyson v. Washington County, 12 L. R. A. (N. S.) 350-351.)

44 PROBATE FEES

To Ab. H. Romans, May 21, 1931.

Under Ch. 79, S. L. 1931, and Ch. 80, S. L. 1929, the docket fees required at the time of filing the first papers are intended to take the place and be in lieu of the fees of county judges as set forth in Sec. 7886, C. L. 1921. The same rule should apply to this docket fee that now applies to the lump sum docket fee in the district courts.

45 EMBALMING EXAMINERS

To State Board of, May 21, 1931.

Analysis of powers of the Board of Embalming Examiners under Chapter 95, Sections 4790-4801, inclusive, Compiled Laws of Colorado, 1921.

46 NATIONAL GUARD

To Governor Adams, May 22, 1931.

Discussion of the constitutionality of H. B. 349, relating to the issuance of bonds to build armories. (Sections 362-370, C. L. 1921; Sec. 3, Art. XI, and Sec. 4, Art. XVII, Colo. Const.)

47 GAME AND FISH

To C. E. Hagie, May 22, 1931.

The act of 1899, as interpreted by our courts (Hornbeck v.

White, 20 Colo. App. 13; People v. Williams, 61 Colo. 11), vests the ownership of game in the state as proprietor. Therefore, persons hunting black and brown bear must have a big game license. (Sec. 1538, C. L. 1921.)

48 STATE LANDS

To John R. Seaman, May 27, 1931.

Purchase certificates of ex-service men for the purchase of state lands do not represent any assessable equities in said land, unless payment has been made thereon. (Sections 1178, 1202, 1207 and 1208, C. L. 1921.)

49 BUILDING AND LOAN COMMISSIONER

To W. D. MacGinnis, May 28, 1931.

The effect of S. B. 240, which is Ch. 58, S. L. 1931, is to abolish the position of Deputy Building and Loan Inspector, with the result that the salary of the present deputy can be paid only up to and including the 25th of May.

50 HAIL INSURANCE

To T. P. Detamore, May 28, 1931.

Moneys in the hail insurance fund may not be expended for the entertainment of visiting hail insurance commissioners. (Sec. 24, Ch. 111, S. L. 1929.)

51 COUNTY FUNDS

To J. A. Carruthers, May 29, 1931.

The payment of a salary and traveling expenses for a county home demonstrating agent is a matter to be determined by the county commissioners; the matter for determination being as to whether said agent is so closely allied with the county agriculturist as to come under Sections 3024 or 3029, C. L. 1921 (Sec. 8609, C. L. 1921).

52 BUILDING & LOAN COMMISSIONER

To W. D. MacGinnis, June 1, 1931.

The present deputy inspector of Building & Loan Associations is a certified civil service employe and an accountant. Since the duties and qualifications of the deputy inspector, provided for in the new law are the same as those provided for in Sec. 2809, C. L. 1921, Ch. 58, S. L. 1931, cannot be construed to deprive Mr. Miller of his position in the classified civil service, and he is, therefore entitled to continue to draw his salary.

53 MOTOR VEHICLE LAW

To Chas. M. Armstrong, June 5, 1931.

The provisions of Sec. 73, Sub. (a), Ch. 122, S. L. 1931, ap-

ply to home rule cities. (Citing Vol. 42 C. J., pages 618-619; Keefe v. People, 37 Colo. 317; and Helmer v. Sacramento County, 48 Cal. App. 140.)

54 APPROPRIATIONS

To W. D. MacGinnis, June 9, 1931.

The appropriation made by Ch. 16, S. L. 1931, for the payment of election contest proceedings, not being for the ordinary expenses of the legislature, and the bill not containing a clause placing it in any class, is of the fifth class.

55 OLEOMARGARINE

To Walter S. Freeman, June 9, 1931.

The broad purpose of Section 2 of H. B. 10 is to require that some one, either wholesaler or retailer, pay a tax of 15 cents upon each pound of oleomargarine and that those dealers who are in the common acceptation of the term wholesalers shall pay a license fee of $25.00 per year.

56 ALCOHOL

To University of Colorado, June 11, 1931.

The University of Colorado cannot purchase alcohol outside the state.

57 MOTOR VEHICLE CODE

To C. M. Armstrong, June 11, 1931.

So much of the appropriation of $25,000 as is necessary to carry out the provisions of Sec. 146 of Ch. 122, S. L. 1931, becomes available July 1, 1931, the first day of the fiscal period, notwithstanding the fact that some portions of the Act do not become effective until January 1, 1932.

58 WORKMEN'S COMPENSATION

Industrial Commission, June 11, 1931.

In the absence of affirmative evidence of intimidation or duress in the procuring of petition of employes of a coal company that the wage scale be lowered and the granting of such petition by the company, there is nothing upon which the Industrial Commission could act in determining that these agreements are not valid and proper. (Citing Art. I, Sec. 10, Sub. 1, U. S. Const., Sec. 11, Art. II, Colo. Const., 12 C. J. 951. Note 54, and Carlson v. Carpenter Cont. Assn., 305 Ill. 331, 137 N. E. 222.)

59 BUILDING & LOAN

To W. D. MacGinnis, June 19, 1931.

The salaries provided for in Ch. 58, S. L. 1931, are statutory, and continuing, and are payable out of the General Revenue Fund.

60 **SCHOOLS**

To Bessie Stoffle, June 22, 1931.

An appropriation made by a school board for a teacher's salary cannot be used to transport pupils from one district to another.

A teacher can contract for a salary less than $125 per month.

61 **COLORADO HOSPITAL**

To W. D. MacGinnis, June 22, 1931.

The State Treasurer should refuse to pay the claim of an architect for work which is not done pursuant to legal authority.

62 **SCHOOLS**

To Elia N. Conwell, June 22, 1931.

Where a new district is formed from the territory of an existing district, Sec. 8311, C. L. 1921, governs as to the separation of the funds, but Sec. 8313, C. L. 1921, prohibits the drawing of any funds from the county treasurer by the new district until the contingencies therein provided, have been met.

63 **RODENT CONTROL**

To D. D. Green, June 22, 1931.

Under Ch. 153, S. L. 1927, where expenses have been incurred in rodent control, bill should first be submitted to the individuals liable and upon the failure of such individuals to pay as required by statute, certification should be made to the county commissioners who are required to reimburse to the state, after which they may reimburse themselves by suit or tax levy against the property of the individuals who are primarily liable.

64 **RESIDENT LANDOWNERS (Pest District)**

To Earl J. McCarty, June 23, 1931.

Anyone who owns land in the district and resides in the district, whether they reside upon the land which they own or not, is a "resident land owner" under Ch. 111, S. L. 1925.

65 **SCHOOLS**

To Clyde Sone, June 23, 1931.

A school board has no power to issue bonds for funding registered warrants or for the payment of a judgment against the district, without a vote of the qualified electors of the district. (Sec. 8356, C. L. 1921.)

66 **COUNTY TREASURER**

To P. T. Edmunds, June 24, 1931.

Chapter 83, S. L. 1927, requires county treasurers to deposit county funds in banks upon an agreed rate of interest of not less

than 2% per annum upon daily balances, but does not require county funds to be deposited in banks located in the county, but "in one or more banks located in the State of Colorado." The rate of interest, however, must be that required by the statute. (Sec. 5978, C. L. 1921.)

67 GENERAL ASSEMBLY

To Governor Adams, June 24, 1931.

Members of the General Assembly are not eligible to appointment to the position of Water Commissioner because such positions are civil offices under the State rather than mere employments. (Sec. 8, Art. V, Colo. Const., Sections 1919, 1922, 1923, C. L. 1921, and 1924, C. L. 1921 as amended by ch. 134, S. L. 1923.)

68 SCHOOLS

To Clyde Sone, June 25, 1931.

The building of a two room addition to a school building could hardly be considered as repairs, and the school board would have no right to erect and finance such an addition without a vote of the electors. (Sec. 8356, C. L.1921.)

69 DIRECTOR OF MARKETS

To John J. Tobin, June 29, 1931.

Construction of Ch. 96, S. L. 1931.

June 29, 1931.

Mr. John J. Tobin,
Director of Markets,
State Museum Building,
Denver, Colorado.

Dear Mr. Tobin:

I have your letter of the 15th inst., in regard to House Bill No. 431, passed by the last session of the General Assembly.

Without repeating in full the several questions which you ask concerning this bill, my answers are as follows:

1. It is my opinion that the last four lines of Section 4 mean that inspectors must be men experienced in the inspection of fruits and vegetables, and in commercial packing practices, and that each must hold, at the time of his appointment, a federal fruit and vegetable inspector's license. The language used admits of no other interpretation.

2. Under Section 6 of the Act, I see no reason for submitting "for approval at one or more public meetings called for that purpose, and attended by representative growers and shippers of the localities interested in the industry affected" the grades, grading rules and regulations, in cases where the Director adopts the grades promulgated by the United States Department of Agriculture. It

is only in cases where grades, other than those of the United States Department of Agriculture, are adopted by the Directors that it is necessary to submit them to public meetings.

3. The fees for inspection, classification of grades, etc., provided for in Section 18 may be collected by civil suit brought in the name of the State by the Attorney General or a Special Assistant appointed by him in the county where the suit is brought. I am also of the opinion that a refusal to pay these fees would subject the person so refusing to prosecution, under the penal provisions of Section 41 of the Act.

4. Under Section 24 of the Act, I believe it was the intention of the legislature to require inspection of all straight or mixed quantities packed for sale, offered for sale, consigned for sale or sold of 1,000 pounds or more in weight of the fruits or vegetables therein mentioned, except where a mixed carload contains one-tenth or more in aggregate weight of any fruits or vegetables not named in this section and except carload shipments of any fruits or vegetables named in the section to canneries or for by-product purposes, and also except intrastate shipments not exceeding four thousand pounds, and in the case of potatoes not exceeding seven thousand pounds, destined solely for immediate local consumption at points within this state and where inspection service is not available, either at the point of origin of said shipment, at the destination thereof or at any intervening point on the route to the destination point. Your question relates to this last exception of intrastate shipments of four thousand pounds of fruits or vegetables and in the case of potatoes seven thousand pounds. It seems that the legislature intended this exception to apply only where inspection is not available. Further answering your question, it is my opinion that the shipments mentioned in this section include those by express.

5. This Act was approved by the Governor May 18, 1931. It was passed without the emergency or safety clause, and will therefore become effective ninety days from May 18, or August 16, 1931.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.
By OLIVER DEAN,
Assistant Attorney General.

70 MOTHER'S COMPENSATION

To Frank S. Turner, County Judge, June 30, 1931.

A mother who has a savings account of $1,600.00 at interest, would not come within the intention of the Act and should not be entitled to the compensation.

71 SCHOOLS

To Eleanor Southwell, June 30, 1931.

The provision contained in Sec. 2, Art X, Colo. Const., "that one or more public schools shall be maintained in each school district within the state," is mandatory. (Citing Duncan, et al., v. People, 89 Colo. 149.)

72 PUBLIC UTILITIES

To Public Utilities Commission, July 1, 1931.

All fees collected under Sec. 15, Ch. 173, S. L. 1931, must be paid into the State Treasury to the credit of the General Fund of the State.

73 CIVIL SERVICE

To E. W. Pfeiffer, July 2, 1931.

A person holding a position in the classified civil service may, if he or she deems it advisable, hold the position and perform the duties thereof, without demanding the full amount of the salary appropriated. (Sec. 130, C. L. 1921.)

74 CIVIL SERVICE

To Civil Service Commission, July 3, 1931.

Ch. 156, S. L. 1931, relating to compensation of state employes, construed.

75 PUBLIC OFFICERS

To Governor Adams, July 3, 1931.

It is contrary to public policy for a public body or board to enter into any contract in which a member thereof has a personal or private interest. It would be improper for the Board of Corrections to enter into a contract to purchase motor vehicle accessories from a company of which a member of the Board is president. (Citing School District v. Pomponi, 79 Colo. 658, and Oliver v. Wilder, 27 Colo. App. 337.)

76 SCHOOLS

To Mrs. Lewis, July 6, 1931.

It is probable that the counting of irregular votes at a County High School Organization meeting would be considered illegal by the courts.

Sec. 8420, C. L. 1921, provides that any school district maintaining a high school, may, by adverse vote, exclude itself from a county high school district.

In the event of the organization of a county high school district, it becomes the duty of the county high school committee to locate the county high school. (Sections 8400 and 8421, C. L. 1921.)

77 MOTOR VEHICLES

To C. M. Armstrong, July 7, 1931.

In determining what county shall issue certificates of title when repossession is exercised by the mortgagee under the terms of the mortgage, Sec. 11, Ch. 136, S. L. 1925, controls. (Sec. 3, S. L. 1927.)

78 MARRIAGE

To C. R. Furrow, July 7, 1931.

Where a statute requires that an act be performed at a fixed number of days previous to a specified day, the last day should be excluded and the first day included in making the computation. (Ch. 114, S. L. 1931.)

79 STATE EMPLOYES

To C. C. Hezmalhalch, July 7, 1931.

Water Commissioners and their deputies are not state employes under the definition in Paragraph 1, Sec. 1, Ch. 157, S. L. 1931.

80 DAIRY COMMISSIONER

To Walter R. Freeman, July 8, 1931.

Both frozen custard and the similar product which is being used in some parts of the state in the making of thick malted milk, are properly within the category of dairy products and the manufacturing requirements applicable to dairy products may be invoked with reference thereto.

81 MOTOR VEHICLES

To Worth Allen, July 8, 1931.

Ch. 134, S. L. 1927, and Ch. 120, S. L. 1931, both apply to motor vehicle operations conducted wholly within a home ruled city.

82 MOTOR VEHICLES

To Public Utility Commission, July 8, 1931.

Construction of Ch. 120, S. L. 1931.

July 8, 1931.

The Public Utilities Commission,
State Office Building,
Denver, Colorado.

Gentlemen:

I have your letter of June 23, requesting from this office an opinion on certain questions that have arisen concerning the interpretation of House Bill No. 173, passed at the last session of the General Assembly.

In giving you an opinion on these questions, it is my judg-

ment that we should first consider the act as a whole in order to determine the intent and purpose thereof.

First, it will be noted that the title provides for the regulation of the use of the public highways and of persons, etc., operating motor vehicles used in the business of transporting persons or property thereon for compensation or hire.

We feel that the word "business" in the title is a very important word inasmuch as it eliminates from the operation of the act those persons, etc., that intermittently use the highways for the transportation of property or persons. Webster defines "business" as "Any particular occupation or employment habitually engaged in, especially for livelihood or gain."

Not only is the word "business" used in the title, but in the definition of "private carrier." Section 1, subdivision (h) of the Act defines a "private carrier" as "a person, etc., operating, etc., any motor vehicle in *the business* of transporting persons or property for compensation or hire over public highways."

We should also take into consideration the following words contained in Section 1, subdivision (h)—"and shall include all persons or corporations operating their own motor vehicles for the transportation of their own property, goods, or merchandise, who charge or collect from the consignee, purchaser or recipient of such property, goods or merchandise, compensation for transporting or delivering the same." Also, the definition of "compensation" as found in Section 1, subdivision (8), where "compensation" is defined as "money or property of value charged or received, etc., whether *directly or indirectly*," as compensation for services rendered in transporting over public highways, etc.

The above words and phrases seem to be of the utmost importance in the interpretation of the act as related to the questions propounded to us in your letter.

Considering the act as a whole, we have come to the conclusion generally that persons and corporations operating motor vehicles on public highways so continuously as to constitute a business, for a consideration charged or received, or to be charged or received, directly or indirectly, are subject to the provisions of this act.

Section 21 may be construed as an attempt to exempt certain classes of persons from the provisions of the act. It is impossible to give any meaning to this section, unless considered with the rest of the act. It states:

> "Nothing in this act shall be construed as prohibiting the transportation of farm products * * * by any person chiefly engaged in farming," etc.

A careful reading of the act fails to disclose any attempt to prohibit transportation of farm products to market by those chiefly engaged in farming, or by anyone else. The evident meaning of that section is as follows:

> "Nothing in this act shall be construed as prohibiting (without the payment of the tax provided in this act) the transportation of farm products to market by persons chiefly engaged in farming (and not in the *business* of transporting persons or property)."

A person or corporation may be engaged chiefly in farming and also in the business of transporting persons or property for compensation or hire, as defined in this act. Such person or corporation would not be liable for payment of the tax for the use of the highways in connection with his farming operations, but would be liable for the tax in connection with his business of transporting persons or property for compensation or hire.

The Colorado act differs essentially from the Florida act in that the Florida act exempts any transportation company engaged exclusively in transporting agricultural, horticultural, dairy or other farm products and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point *en route* to primary market or to motor vehicles used exclusively in transporting or delivering dairy products, whereas the Colorado act makes no attempt to exclude that class of private carriers from the provisions of the act.

Applying the above interpretation of the act to the concrete examples contained in your letter, we would advise you as follows:

In your first proposition, a truck operator is engaged in hauling coal, which evidently means he is engaged in the business of hauling coal. He makes no direct charge for hauling the coal but includes the same in the price charged the customer. We are therefore of the opinion that he would be engaged in the business of transporting over the public highways for hire, and would be subject to the provisions of the act.

In your second question, you state that a merchant in the fruit business in Greeley comes to Denver twice a week and hauls back to Greeley in his own truck fresh fruits of various kinds. The sale price is made by taking into consideration the cost of the operation of the truck between Greeley and Denver. Whether this merchant is subject to the act is a question of fact to be determined by the Public Utilities Commission, as to whether or not such merchant is engaged in the business of transporting such merchandise for hire, or whether such transportation over the public highways is merely incidental to his business. This merchant may, in addition to the merchandise he hauls from Denver, buy considerable merchandise locally and scatter the expense of the transportation of the merchandise from Denver over his entire business as an item of overhead, in which instance he would not be liable to the payment of the tax. On the other hand he may haul all his merchan-

dise from Denver in such a manner that he would be under terms of the act.

Your third question deals with a retail merchant who delivers his merchandise to his customers, making no extra charge for the delivery. It is obvious that this merchant does not come under the terms of the act, inasmuch as the cost of operating and the delivery service is an item of general overhead.

In question four, we are of the opinion that a man engaged in the hide business in Alamosa who brings his hides to Denver in his own truck is not engaged in the business of transporting for hire and would not come under the terms of the act.

In the case of question five, where a man is engaged in raising vegetables and hauls his vegetables, together with others which he buys to a market nearby, we are, likewise of the opinion that he does not come under the act; that the hauling is merely incidental to his real business.

A man who buys corn at one place and delivers it to another, referred to in question six, would evidently be engaged in the business of hauling, and therefore would come under the terms of the act.

Likewise, with a man who buys livestock on the farm and sells it in Denver, referred to in question eight; the farmer spoken of in question seven, and the farmer spoken of in question six-a, are evidently not engaged in the business of transporting for hire and uses the highways merely as incidental to their business of farming and therefore do not come under the terms of the act.

In arriving at our conclusions in this matter, you are advised that we have carefully read the case of Collins-Dietz-Morris Company v. Corporation Commission, 48 Okla. App. Ct. Rep., at page 470, which case interprets a statute similar to ours, and the case of Smith v. Cahoon, decided May 25 of this year, by the United States Supreme Court. We are of the opinion that the Florida act is essentially different from the Colorado act, and therefore the law laid down in that case is not applicable here.

The Oklahoma act is, in some respects, similar to our act, and we are of the opinion that the Oklahoma decision is sound and would probably be followed by our own courts, particularly in distinguishing between that class of persons who make a charge for transporting merchandise by including the cost thereof in the cost of goods, and that class of persons who absorb the cost of delivery in the general overhead expense—the first class of which comes under the terms of the act and the latter being exempt therefrom.

Respectfully yours,

CLARENCE L. IRELAND,
Attorney General.

83 **IRRIGATION DISTRICTS**

To State Board of Land Commissioners, July 8, 1931.

A bond issue on land of an irrigation district is subordinate to a deed of trust given to the State previous to the land becoming a part of the irrigation district.

July 8, 1931.

Board of Land Commissioners,
Capitol Building,
Denver, Colorado.

Gentlemen:

Your letter of June 5th, and previous letters upon the same subject have been duly received. This office has given the subject matter thereof careful consideration.

We find that the land in question was owned by one Wm. P. Wagner, who acquired title thereto in 1902, together with certain water-rights in the Maybell Irrigation Canal. In 1920, Mr. Wagner negotiated a loan with the Land Board for some $3,000.00 and gave to the Land Board a Deed of Trust upon the land, together with the 291 shares of capital stock of the Maybell Canal Company. In 1922, the Maybell Irrigation District was formed, including the 101 acres upon which a Trust Deed had been given to the Land Board, without any notice thereof being given to the Land Board. Section 343, Chapter 35, page 651 of the Compiled Laws of 1921, and the following section provides a method for the formation of irrigation districts. Apparently the irrigation district in question was formed in the usual way and the record owner of the property, which the Land Board afterward acquired by foreclosure, participated in the formation thereof. Subsequently in 1927, the Trust Deed was foreclosed, and the land bought in by the State Land Board and upon the 20th day of March, 1929, the land was sold to one John S. Gent, and a certificate of purchase issued therefor to him.

Relating to the merits of the proposition, it might appear that there are two sections of the statute, which would have effect.

Section 2082 of the Compiled Laws of 1921, provides as follows:

> "* * * provided that in no case shall any land be taxed, or subject to taxation, for irrigation district purposes under this act, or under any other or former law relative to irrigation districts, which, by reason of location, or the broken, uneven surface, or unsuitable character or quality of the soil is unsuitable for irrigation and cultivation, or which, from any natural cause or causes, is not capable of irrigation and cultivation, except at a financial loss."

And, while this section has been amended in other particulars this portion of the section has been re-enacted and continued in force.

In regard to this, however, the case of Wilder v. South Side Irrigation District and others, 55 Colo. 353, construing a similar section of the old law says, that the exclusion of lands, under a provision such as this, is permissive rather than automatic, and says:

> "If the proceedings for the organization for the district, and the definition of its boundaries, conform to the statute, one entitled to lands of the character described in the proviso to Section 1 of the act, is afforded opportunity to object to the inclusion thereof in the district, and he fails to avail himself of the opportunity afforded by the statute, and permits the district to be so organized as to include such lands, then by force of the provisions made in Sections 2, 3 and other sections of the act he is concluded. Any attempt afterwards made to exempt such land from liability for the indebtedness of the district, lawfully contracted, is a collateral attack on what is res judicata."

Section 2, Chapter 122 of the Session Laws of 1917, page 452, reads as follows:

> "In the event that any property upon which the State of Colorado holds a deed of trust or a loan made in the manner aforementioned, shall, after the execution of such deed of trust, be included in any irrigation district, drainage district or any other district wherein a levy is made for local public improvements, the lien thereby created shall be subject to and subordinate to the lien of the deed of trust in favor of the state, which shall be in nowise defeated by the lien of such irrigation district, drainage district or local public improvement."

This section has continued as a part of the law ever since its original enactment although other sections of the law have been amended.

In our opinion, when the state foreclosed its Trust Deed upon the property in question and bid it in, it acquired the title to the property free from the subordinate incumbrance created by the bond issue, which was not upon it at the time the loan was made and when the state transferred the title to the present owner it transferred it to him free from such incumbrance.

We are of the opinion, therefore, that the present owner can maintain successfully the position that the land in question is free

from the incumbrance created by the bond issue, although it is true that the question has not been decided by our courts.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.
By TOM L. POLLOCK,
Assistant Attorney General.

84 STATE PENITENTIARY

To Governor Adams, July 9, 1931.

1. The band instruments which were burned might properly be replaced out of the appropriation for Maintenance;

2. The money collected for insurance on account of damage to the tag factory could properly be used to rehabilitate the tag factory.

85 CONVICTS

To Governor Adams, July 28, 1931.

Under Sec. 756, C. L. 1921, the good time to be deducted in behalf of a convict, is to be subtracted from the time of his sentence.

July 28, 1931.

Hon. Wm. H. Adams,
Governor of Colorado,
Executive Chambers.
Capitol Building,
Denver, Colorado.

My dear Governor Adams:

You ask the question what is the maximum amount of time under Section 756, Compiled Laws of Colorado, 1921, and Section 757 as amended by House Bill No. 474 of the Twenty-eighth Colorado General Assembly, approved April 3, 1931, that may be deducted from a prisoner's sentence to the State Penitentiary.

Said Section 756 reads as follows:

> "That every convict who is now, or may hereafter be, imprisoned in the penitentiary, and who shall have performed faithfully, and all who shall hereafter perform faithfully, the duties assigned to him during his imprisonment therein, shall be entitled to *a deduction from the time of his sentence* for the respective years thereof, and proportionately for any part of a year, when there shall be a fractional part of a year in the sentence, to-wit: For the first year, one month; for the second year, two months; for the third year, three months; for the fourth year, four months; for the fifth year, five months; for the sixth and succeeding years, six months." (Italics ours.)

Section 757, as amended, reads as follows:

> "Hereafter *convicts* of the State Penitentiary undergoing sentence in accordance with law who shall or may be engaged in work connected with said Penitentiary within or outside the walls of said institution, and known as 'trusty prisoners' and who shall be employed on the ranches or gardens, lime kilns or quarries, stone yards or quarries, or upon public roads and highways in this State in accordance with law, or at any other class of work within or without the wall, of said prison, and who shall conduct themselves in accordance with the rules of the prison and perform their work in a creditable manner, may, upon approval of the warden, *be granted such good time in additional to that allowed by law* as the Board of Corrections or other managing Board of said institution may order, not to exceed ten days in any one calendar month. Trusty prisoners engaged in productive and constructive work, as may be defined by the Board of Corrections in its rules, may be granted additional good time not to exceed three days in any one calendar month." (Italics ours.)

It is clear that the time to be deducted under Section 756, in behalf of a prisoner, is to be subtracted "from the time of his sentence."

In re: Blocker, 62 Colo. 259, which holds, that under this section the prisoner has served the first year at the end of eleven months, and has served the second year at the end of ten more months, etc., figuring thus to the end of "the time of his sentence."

Under Section 757, as amended, "* * * convicts * * * may * * * be granted such good time in addition to that allowed by law as the Board of Corrections may order, not to exceed ten days in any one calendar month." And "may be granted additional good time not to exceed three days in any one calendar month." That is to say, the maximum of thirteen (13) days per month may be deducted "from the time of his sentence" upon the recommendation of the Warden and Board of Corrections.

It has been suggested that possibly this thirteen days per month allowed by Section 757, as amended, should be deducted from the time the prisoner actually serves, after deducting the time allowed under Section 756, rather than "from the time of his sentence." Whatever merit there may be in this method of computing time to be deducted from a prisoner's sentence we are precluded from accepting that interpretation by virtue of the rule laid down in the Blocker case, supra, to-wit:

> "If the statute is capable of both constructions * * * that of two constructions, the one should be adopted that operates in favor of liberty." (Page 262.)

There is this distinction, however, between the application of Section 756 and 757 as amended, that the full time under the former section operates as a matter of right, while under the latter section, the Warden and Board of Corrections may recommend any amount of time to be deducted from their sentence not to exceed thirteen days in any one calendar month, so long as they make such rule for thirteen days or less operate uniformly.

In this opinion we are not considering contingencies whereby any good time might be forfeited.

We call attention also to the former opinion of this office, dated September 4, 1930, addressed to you on the subject of prisoners' paroles, which we hereby incorporate as a part thereof, bearing in mind that Section 758 therein discussed is repealed and that Section 757 has been amended, which, however, does not change the conclusions therein expressed.

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.

By SIDNEY P. GODSMAN.
Assistant Attorney General.

86 RETIREMENT ASSOCIATION

To F. H. Wolcott, July 28, 1931.

All employes of the University of Colorado, other than the President, Dean, Professors and Instructors, are eligible to membership in the State Employes Retirement Association. (Ch. 157, S. L. 1931.)

87 MOTOR VEHICLES

To Chas. M. Armstrong, July 29, 1931.

The penalties enumerated in Sec. 133, Ch. 122, S. L. 1931, are to be imposed only upon those convicted of the offense of reckless driving.

All traffic violations under Part IV, Ch. 122, S. L. 1931, where there has been a conviction or forfeiture of bail, must be reported to the Motor Vehicle Department.

All fines or forfeitures collected for violations of any of the provisions of Part IV of the act must be transmitted to the Motor Vehicle Department.

88 STATE VETERINARIAN

To A. N. Carroll, July 29, 1931.

The laws of this State do not permit the granting of license to practice, on the theory of reciprocity. (Sec. 4671, C. L. 1921.)

89 **BUILDING & LOAN**

To Civil Service Commission, July 31, 1931.

A member of the General Assembly may hold the position of Deputy Building & Loan Commissioner, as it is an employment and not a civil office. (Citing Art. III and Sec. 8, Art. V, Colo. Const.; Sections 2790-2814, both inclusive, C. L. 1921; Ch. 58, S. L. 1931; State of Montana, ex rel. Barney, v. Hawkins (Mont.), 250 Pac. 411; annotations 53 A. L. R. 583; State v. Spaulding, 102 Iowa 639, 72 N. W. 288; and Saint v. Allen, 126 So. 548.)

90 **SALARIES**

To W. D. MacGinnis, July 31, 1931.

The Governor's private stenographer and messenger are not employes in the classified civil service, and their salaries may not be raised under the provisions of Ch. 156, S. L. 1931, which provides for graduated salaries for certain classes of employes in the classified civil service.

91 **SCHOOLS**

To Geo. K. Funk, Aug. 3, 1931.

A school board's arrangements for school accommodations in another district, however desirable such may seem, does not satisfy the constitutional mandate that "One or more public schools shall be maintained in each school district within the state." (Sec. 2, Art. IX Const.; Duncan v. People ex rel 89 Colo. 149.)

92 **INDUSTRIAL COMMISSION**

To Industrial Commission, Aug. 4, 1931.

All claims against the Commission, not exhibited with evidence in support thereof within two years after they have accrued, should be refused payment (Sec. 297, C. L. 1921).

All claims that have been exhibited, together with evidence in support, within two years after they have accrued, may be paid with the consent of the proper officers of the commission and the State Auditing Board.

93 **PUBLIC FUNDS**

To Trustees, State Normal School. Aug. 6, 1931.

The provisions of a contract, relating to the building of dormitories at the State Normal School, that all moneys collected for rentals or otherwise, shall be paid direct to the Trustee, and by him paid to the bondholders until such time as the bonds have been fully paid, are legal. (Sec. 335, C. L. 1921.)

94 **LIVESTOCK**

To Dr. Chas. G. Lamb, Aug. 6, 1931.

Under Ch. 167, S. L. 1925, the State Veterinarian must compel

the destruction of tubercular cattle, and if no appropriation has been made by the state for indemnity, or if the appropriation made has been exhausted, the owner of such cattle must look to the legislature for relief.

The State Veterinarian may compel the branding and slaughter of reactors to the extent of forceful branding, and slaughter by himself or deputy.

Under Ch. 164, S. L. 1931, the State Veterinarian should keep a complete record of all cattle reacting to tubercular tests, whether such tests are made by him or by private veterinarians.

Ch. 164, S. L. 1931, in no way supersedes Ch. 167, S. L. 1925, but simply requires additional records to be kept. (Durand v. Dyson, 271 I., 390.)

95 FRUITS AND VEGETABLES

To J. J. Tobin, Aug. 6, 1931.

The State can establish reasonable grades and standards for commodities, but it cannot prohibit their sale if they are wholesome, innocuous and harmless.

Commodities enumerated in Ch. 96, S. L. 1931, which fail to meet the minimum requirements established by said act, may be marked and shipped as "unclassified."

August 6, 1931.

Hon. John J. Tobin,
Director of Markets,
312 State Museum Building,
Denver, Colorado.

Dear Sir:

We have your letter of July 31st, wherein you ask as follows:

1. May the commodities enumerated in House Bill 431, Session Laws 1931, when they fail to meet the minimum standards provided for said commodities by said act, be shipped if they are in containers marked "unclassified"?

1a. What interpretation should be given to the apparent conflict in two provisions in Section 39 of said Act.

Sections 25 to 40 inclusive, provide for the minimum standard of grades for the commodities enumerated in said Act. In all instances it is provided that when a lot of a given commodity fails to meet the requirements of any grade so established, it shall be marked "unclassified." In the case of the minimum onion grade the following provision appears:

> "When a lot fails to meet the minimum requirements for any grade so established it may be marked and shipped as 'unclassified.' "

Section 10 of said Act reads as follows:

> "Whenever any grades or classifications of fruits and/or vegetables become effective under this Act, no

person thereafter shall pack for sale, offer for sale, or sell, except as provided in Section 24 hereof, any such described fruits and/or vegetables grown within the State of Colorado, to which such grades or classifications are applicable unless such fruits and/or vegetables conform with such grades or classifications."

Considering the various sections of said act collectively, it seems clear that the word "unclassified" as applied to a given lot of a commodity which has failed to meet the minimum grade for said commodity established by said Act, creates a grade or classification, any may be shipped as such.

The Idaho Supreme Court in interpreting a law similar to the Colorado Law, in the case of Marshall v. Department of Agriculture, 44 Idaho, 440, 445, 446, 258 Pac. 171, said:

> "The state may not prohibit the sale of an article which is wholesome, innocuous and harmless, but it may establish reasonable grades or standards for farm products when sold in the receptacles or containers usually and ordinarily employed, and require that such products when so packed for sale must conform to the grades or standards so established. *(Schmidinger v. Chicago,* 226 U. S. 578, 33 Sup. Ct. 182, 57 L. ed. 364; *Sligh v. Kirkwood,* 237 U. S. 52, Ann. Cas. 1914B, 284, 35 Sup. Ct. 501, 59 L. ed. 835; *Town of St. Martinville v. Dugas,* 158 La. 262, 103 So. 761; *City of St. Louis v. Liessing,* 190 Mo. 464, 109 Am. St. 774, 4 Ann. Cas. 112, 89 S. W. 611, 1 L. R. A., N. S., 918; *State v. McKay,* 137 Tenn. 280, Ann. Cas. 1917E, 158, 193 S. W. 99; *State v. Co-operative Store Co.,* 123 Tenn. 399, Ann. Cas. 1912C, 248, 131 S. W. 867.)"
>
> "Such standards must be sufficiently comprehensive to permit the sale of potatoes usually and ordinarily grown in the various producing sections of the state without any necessary interference with the unquestioned right to sell such product. *(Burns Baking Co. v. Bryan,* 264 U. S. 504, 32 A. L. R. 661, 44 Sup. Ct. 412, 68 L. ed. 813; *State v. McKay, supra.)* As to this phase of the controversy the demurrer was improperly sustained."
>
> See also Detweiler, et al., v. Welch, Idaho Commissioner of Agriculture, et al., 46 Federal Reporter, 2nd Series 71, 75.

It does not follow that because a given lot of a commodity fails to meet the minimum standard established by said Act, that it is unwholesome or harmful. Therefore, applying the rule laid down in the Idaho case, supra, while the state can establish reasonable grades and standards for commodities, it cannot prohibit their sale if they are wholesome, innocuous and harmless.

Answering your first question it is therefore our opinion that any of the commodities enumerated in H. B. 431, when they fail to meet the minimum requirements establshed by said Act, may be shipped when they are in containers marked "unclassified."

Answering your question 1a, it is our opinion that the two provisions in Section 39, as follows:

> "Provided, that it shall be unlawful to ship onions which do not conform to the following minimum standards":

and

> "When a lot fails to meet the minimum requirements for any grade so established it may be marked and shipped as 'unclassified.'"

must be read together. They should be construed to read as follows:

> Provided it shall be unlawful to ship onions which do not conform to the following minimum standards, unless they are marked "unclassified."

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.
By WALLACE S. PORTH,
Assistant Attorney General.

96 EMPLOYMENT AGENCIES

To M. H. Alexander, Aug. 7, 1931.

Under Sec. 4297, C. L. 1921, if the Lutheran Hospice of Colorado Springs is a charitable organization, it would not be required to have an employment agency license, and this would be true even though a fee were charged for the services rendered, in securing employment for applicants. (Sec. 4312, C. L. 1921.)

97 MOTOR VEHICLES

To Chas. M. Armstrong, Aug. 11, 1931.

Under Ch. 122, S. L. 1931, only fines and forfeitures should be remitted to the Secretary of State, as no mention is made to any costs being remitted.

98 CHIROPRACTORS

To Colorado State Medical Society, Aug. 12, 1931.

Where a chiropractor may lawfully attend the sick, he may also sign a death certificate. (Citing Sec. 4558, C. L. 1921, and opinion of this office dated March 2, 1928.)

99 ESCHEAT ESTATES

To John M. Jackson, Aug. 13, 1931.

In escheat estates the county court should order the sale of all property of the deceased, and the money derived therefrom, paid over to the State Treasurer.

The money so received is payable without interest at any time within 21 years, to such persons as shall appear legally entitled thereto.

August 13, 1931.

Hon. John M. Jackson,
State Capitol Building,
Denver, Colorado.

Dear Sir:

We have your letter of recent date wherein you request opinions as to who is entitled to the interest from bonds that are turned into your office as an original part of an escheat estate as well as the interest earned from bonds purchased and held by the State Treasurer as an investment from moneys received by court orders pursuant to Section 5366, C. L. 1921. You also raise the question of the legality of the State Treasurer receiving anything but cash for deposit as a part of an escheat estate. The statute pertinent to this discussion is Section 5366, which reads as follows:

> "If any heirs or legatees of any intestate or testator are unknown or, if known, and there is no person qualified to receive the legacies or distributive shares of such heirs or legatees at the time of making final settlement of the estate, the administrator or executor shall be ordered by the county court to pay any balances remaining in his hands into the state treasury, and the state shall be answerable for the same, without interest, any time within twenty-one years after the same shall have been paid into the treasury, to such person or persons as shall appear to be legally entitled to the same, upon the order of the county court having administration of the estate. After the lapse of twenty-one years from the time any such moneys shall be paid into the state treasury, and no claim therefor having been made and established by any person entitled thereto, said moneys shall become the property of the state, and shall be transferred to the public school fund thereof, and the state shall not be liable therefor. At the time any executor or administrator pays into the state treasury any moneys as aforesaid, he shall make a written report thereof to the attorney general of the state, giving him such information as he may have, under oath or affirmation, touching the identity and antecedents of the deceased, as well as of any person supposed to be entitled to said moneys, to the end that fictitious claims thereto may

> be forestalled. The attorney general shall file such reports in his office and keep an index thereof, and no order shall be made by the county court for the repayment of any moneys so paid into the state treasury without the attorney general having first been served with written notice thirty days before the time of making application therefor. Upon the serving of such notice, the attorney general may appear and take all steps for and on behalf of the state and at its expense, to be paid out of his contingent fund, that any person who might be a defendant to an action might take."

In reading this section you will notice such terms as "to pay any balances," "any such moneys shall be paid," "said money shall become the property of the state and shall be transferred to the public school fund," "at the time any executor * * * pays into the state treasury any moneys," "repayments of moneys." This shows to our mind that only money was intended to be paid over to the State Treasurer and that the State is answerable for only money, without interest any time within 21 years to such persons as shall appear legally entitled thereto. If by chance Liberty Bonds are ordered paid to the State Treasurer as escheats, then in that event we would advise that you immediately proceed to have that estate reopened in the proper county, an administrator appointed, the bonds properly returned and sold by him under Court order. After the sale the proceeds should then be ordered paid to you. This amount (including the returns from the coupons) when received should be held by you as provided in aforesaid Section 5366.

Since Section 5296, C. L. 1921, which reads as follows:

> "Whenever it shall appear necessary or expedient for or to the best interest of any estate or the persons in interest therein, having due regard to the rights of all, except in estates where power to mortgage, sell, or otherwise dispose of real estate is contained in the will of the decedent, the real estate of such estate may be sold or mortgaged as hereinafter provided; provided, that the real or personal estate of any mental incompetent, which is or may be exempt by law from execution, shall not be sold for the payment of his debts."

permits administrators "when it shall appear necessary or expedient for or to the best interest of any estate" to sell real property and Section 5283, C. L. 1921, orders the administrator to sell all goods and chattels of the intestate, there is ample authority to convert the property into cash before turning the same over to the State as an escheat.

We are of the opinion that the treasurer should not take either

real, personal or mixed property as escheats, but the county courts should order the sale of all property of the deceased and the money paid to the state treasurer. We are led to this view by the additional fact that by our statutes no provision is made for the sale of any escheat property by the treasurer and no method is provided for its leasing, care, protection or maintenance by him or anyone else.

We are also of the opinion that interest which has been earned from bonds purchased and held by the State Treasurer as an investment from moneys received under Court orders (pursuant to Section 5366, C. L. 1921) belongs to the State of Colorado.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

By ARTHUR L. OLSON,
Assistant Attorney General.

100 APPROPRIATIONS

To State Auditing Board, Aug. 14, 1931.

The appropriation for seed certification and seed laboratory may be properly assigned to the first class.

August 14, 1931.

State Auditing Board,
Capitol Building,
Denver, Colorado.

Gentlemen:

Pursuant to your oral request for an opinion as to what classification the appropriations for Seed Certification and Seed Laboratory are entitled to, please be advised as follows:

Art. V, Sec. 32, of the Constitution, reads as follows:

> "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

Section 288, C. L. 1921, reads as follows:

> "In case the available revenues of the state for any fiscal year are insufficient to meet all the appropriations made by the general assembly for such year, such appropriations shall be paid in the following order:
>
> First. The ordinary expenses of the legislative, executive and judicial departments of the state government, and interest on any public debt, shall first be paid in full.
>
> Second. Appropriations for all institutions, such as the penitentiary, insane asylum, industrial school and the

like, wherein the inmates are confined involuntarily, and appropriations for charitable institutions, shall be next paid.

Third. Appropriations for educational institutions; provided, that in case there are not sufficient revenues for any fiscal term to meet in full the appropriations for educational institutions, after providing for the necessary amounts appropriated according to paragraphs first and second of this act, then in that event whatever there may be to apply on account of said appropriations for said educational institutions, shall be distributed among all of said institutions appropriated for pro rata according as the amount appropriated for each of said institutions shall bear to the total amount available for all of said educational institutions for said fiscal term.

Fourth. Appropriations for any other officer or officers, bureaus or boards, to be paid pro rata, if there be not sufficient funds to pay in full.

Fifth. All other appropriations made pro rata out of the general fund shall next be paid from all revenues available to meet such appropriations."

The classification act, *supra*, has never been construed by our courts, nor has its validity ever been judicially determined. In speaking of the classification act of 1897, as amended in 1899, Attorney General Campbell said, "While there may be some question as to its validity, it will be assumed that it is the duty of the executive officers to obey strictly the terms of the statute, and for the purpose of this opinion the act will be presumed to be valid in every respect." (Biennial Report, Attorney General, 1899-1900, page 227.)

In speaking of the ambiguity in Section 288, *supra*, Attorney General Boatright said:

"The classification act above quoted which must guide you in determining the priority of the various appropriations is not, in the main, difficult of application, though it is obscure in at least one important respect and silent in another. For instance, you will note that appropriations for 'the ordinary expenses of the legislative, executive and judicial departments of the state government' are placed in the first class, while appropriations 'for any other officer or officers, bureaus or boards' are declared to be of the fourth class. Yet by the express terms of the state constitution all the powers of the state government are divided into but three departments; viz.: 'the legislative, executive and judicial' (see Article III), and all appropriations for any of these three departments are, as above stated, by this statute declared to be of the

first class. Now since all the powers of government are comprehended within the terms 'legislative, executive and judicial,' the question necessarily arises—How can there be a legally created state office, board or bureau that is neither legislative, executive or judicial in its character, and, therefore, to be provided for by a first class appropriation under the terms of the 'first' paragraph of said Section 288. In a word, if the functions of such office, board or bureau are either legislative, executive or judicial in character, an appropriation for its maintenance neeessarily falls in the *first* class, because that class is declared to include all appropriations for the expenses of any of the three departments mentioned, and since, strictly speaking, there can be no office, board or bureau that is neither legislative, executive or judicial in character, it follows that the 'fourth' paragraph of the classification act is ambiguous, to say the least." (Biennial Report, Attorney General, 1927-1928, page 103.)

Notwithstanding the wording of the fourth classification in Seetion 288, *supra*, we cannot contend that the phrase "legislative, executive or judicial" departments as used in the constitution, or in said statute, means only the departments as created and constituted by the eonstitution itself. Nor can we say that appropriations made for the salaries or necessary expenses of officers, bureaus or boards which have been created by legislative aet, are not ordinary expenses of the state government, because the Supreme Court in the case of *Parks v. Soldiers' and Sailors' Home,* 22 Colo. 86, 94, 96, said:

"In declaring what offieers should constitute the executive department of the state, it was not intended that the legislature should not create new exeeutive offieers. Such a presumption would do violence to the intelligence of the framers of that instrument, and of the people who adopted it. It is, we think, the purpose of this seetion to provide for such officers of the executive department as the members of the constitutional convention deemed absolutely indispensable; leaving it to the legislature to create new offices as the growth of the state and experience might suggest, and to abolish the same, but without authority to abolish any of those enumerated.

* * * * * * * *

"We shall not extend this opinion beyond the case presented, and for the purposes of this case it is sufficient to say that every officer of this state who holds his position by election or appointment, and not by contract, and whose duties are defined by statute, and are in their nature continuous, and relate to the administration of the

affairs of the state government, and whose salary is paid out of the public funds, is a public officer of either the legislative, executive or judicial department of the government, and may in the discretion of the legislature properly have his salary included in the general appropriation bill, and have the appropriation therefor take rank accordingly, and as the priority attaches not to the form of the act making the appropriation, but to the office, the priority of a particular appropriation, will not be jeopardized if made by a separate act. Moreover, as the officers established by the constitution and those created by authorized legislative authority are usually required to keep offices, records, papers, etc., *it is evident that expenses for these and like items may also be provided for as a part of the ordinary expenses of the legislative, executive and judicial departments of the government.*

"Our conclusions upon this branch of the argument may be summarized as follows: That as to those offices not expressly enumerated in the constitution, the legislature has plenary power to create or abolish the same, subject to well known constitutional restrictions. It may, subject to such restrictions, increase or diminish the salaries of the incumbents, but while the offices are in existence, and the officers are discharging their duties, appropriations made for their salaries or necessary expenses are entitled to take rank with the ordinary expenses of the state government."

Therefore, while there is an ambiguity as between the first and fourth classifications in our classification statute, we feel that we should be guided by the words of the Supreme Court in the case of Parks v. Soldiers' and Sailors, Home, *supra,* which, in effect, give a meaning to the words "ordinary expenses" as used in the first classification.

Answering now your question, as best we can in view of the ambiguous character of the classification statute as above pointed out, it is our opinion that while there may be some doubt as to whether the appropriation for Seed Certification and Seed Laboratory fall in the first, rather than in the fourth class, they may be properly assigned to the first class.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.
By WALLACE S. PORTH,
Assistant Attorney General.

101 SALARIES

To W. D. MacGinnis, Aug. 15, 1931.

No increase above the amount fixed by the legislature can be given any employe from the general fund of the state, but the State Board of Land Commissioners may legitimately pay certain employes an increase from the fund derived under Sec. 1161, C. L. 1921.

102 FRUITS AND VEGETABLES

To J. J. Tobin, Aug. 17, 1931.

The inspection fees on truck shipments, imposed by Ch. 96, S. L. 1931, on the commodities enumerated therein, should be paid by the person, firm or corporation making the shipment.

103 ALIENS

To Pietro Gerbore, Aug. 17, 1931.

Rule 64 of our Supreme Court provides that an applicant for admission to the Bar of the State shall make an affidavit that he is a citizen of the United States.

An alien could not be a notary public, owing to the nature of the oath required.

Aliens are prohibited from carrying firearms and, therefore, may not hunt. May be entitled to fish under Sec. 1542, C. L. 1921.

Aliens could not teach in the public schools, because an oath of allegiance is required.

There is no law precluding aliens from being bank directors.

The statutes of this state specifically provide that aliens may own property.

104 SCHOOLS

To John Nelson, Aug. 21, 1931.

The wife of a member of a school board is a separate person under Sections 5578 and 5586, C. L. 1921, and she may contract in her own name, and is not prohibited by law from entering into such a contract.

105 REAL ESTATE LICENSE FUND

To W. D. MacGinnis, Aug. 25, 1931.

The fund created by Sec. 5, Ch. 149, S. L. 1929, constitutes a continuing appropriation, and warrants may be drawn on said fund in excess of the amounts provided in the long appropriation bill, as said bill cannot amend a special statute. (Citing Sec. 11, Ch. 147, S. L. 1925; People v. Goodykoontz, 28 Colo. 507; People, ex rel., v. O'Ryan, 71 Colo. 69, and opinion by this office dated June 8, 1925, to Carl S. Milliken.)

106 **APPROPRIATIONS**

To W. D. MacGinnis, Aug. 26, 1931.

Appropriation for Uniform State Laws Commission belongs to the first class. (Citing opinion to the State Auditing Board, dated Aug. 14, 1931.)

107 **WORKMEN'S COMPENSATION**

To Industrial Commission, Aug. 27, 1931.

The Industrial Commission in considering an award to a divorced claimant, should ascertain all the facts connected with such divorce; also, whether or not the claimant was voluntarily separated and living apart from her husband at the time of his injury and was or was not dependent upon him for support. (Citing Ch. 91, S. L. 1929, and Cartier v. Cartier, 88 Colo. 76.)

108 **WORKMEN'S COMPENSATION**

To Industrial Commission, Sept. 1, 1931.

A marble quarry comes within the provisions of Sections 4172-73-74, C. L. 1921, concerning dangerous employments and prohibiting a working day exceeding eight hours therein.

109 **TAXATION**

To State Tax Commission, Sept. 3, 1931.

A company which fails to avail itself of statutory administration relief must suffer the consequences of its own negligence in permitting a tax to be laid, collected and spent, when timely action on its part might have prevented the situation. (Citing Sections 7291, 7292, 7458, C. L. 1921, and First National Bank v. Patterson, 65 Colo. 173.)

110 **REFERENDUM PETITIONS**

To Chas. M. Armstrong, Secretary of State, Sept. 10, 1931.

If protest to referendum petition is filed and hearings had and determined within the 90 day period (Sec. 1, Art. V, Const.), petition may be withdrawn and recirculated for a period not exceeding 15 days, provided 15 days still remain of the 90 day period. (Citing in re: Interrogatories of Governor, 66 Colo., 319; and Sec. 31, C. L. 1921.)

111 **TAXATION**

To L. M. Perkins, Sept. 15, 1931.

County Boards of Equalization may horizontally reduce assessments made by county assessors on classes and sub-classes of property.

County treasurer may not refuse to publish delinquent tax list and notice, nor to sell property for delinquent taxes.

September 15, 1931.

Mr. L. M. Perkins,
County Attorney,
Durango, Colorado.

Dear Sir:

This is in answer to your letter of the 7th inst.

You ask therein whether there is any combined or united effort being made by the banks throughout the State along the lines made by the First National Bank of Durango, in asking for a rebate of taxes in the county of La Plata.

I wish to advise you that there is a combined and persistent effort by the clearing house banks over the State along these lines, and the case that is now pending in your county is just one of many.

As to the merits of the matter it would seem that this matter is settled in the case of South Broadway National Bank of Denver v. City and County of Denver, which case is No. 378, decided on July 23, 1931, in the Circuit Court of Appeals. This opinion is not as yet reported and I believe will appear in the next issue of the Federal Reporter Advance sheets. It seems from this case that the method adopted by your Assessor is correct and that the assessment as made and shown in the protest made to the Assessor, is the proper method and the court holds that it amounts to the assessment of the shares of stock.

Your second question is as to whether the county commissioners of any county acting as a Board of Equalization may make a horizontal reduction on an assessment of all real estate values as made by the assessor. You enclosed a copy of a letter to your Board of County Commissioners, advising them that the county board could not make a horizontal reduction on real estate valuations made by the assessor and you therein cited the case of Denver v. Pitcher, 54 Colo. 203.

The opinion of this office does not agree with this advice and for the reason that the statute, *viz.:* Section 5638 of the 1908 Revised Statutes, upon which the Pitcher case is based, has been amended or repealed in the amendment to the Constitution by Section 15, Article 10. We feel that while the case of Denver v. Pitcher, 54 Colo., was correct, the amendment to the Constitution changed the then existing law so that the County Board not only now has the right to adjust and equalize but *also* to *raise* or *lower* the valuations placed by the Assessor. The reading of the case of People v. Pitcher, 61 Colo. 149, is explanatory of our opinion. I enclose herewith a copy of an opinion issued by this office in 1930 concerning this particular matter. You will note, however, that in the reading of the section of the Constitution and our opinion that the action of the County Board in making a horizontal increase or decrease may, when certified to the Tax Commission, be disap-

proved by it with the possibility of the State Board of Equalization being the final arbiter.

However, even though your county board may have a right to make a horizontal decrease or increase it may not do so as regards property in general but only as to particular classes or sub-classes of property (see Com. v. U. P. R. R. Co., 299 Pac. 1055) and (U. P. v. Board, 35 Fed. (2d) 785).

Your third question is as to whether or not the Treasurer of any county may decline to publish the delinquent tax list for any year. It is the opinion of this office that the Treasurer may not decline to publish a delinquent tax list or decline to hold the sale for delinquent taxes for any one year. I am enclosing herewith a copy of an opinion rendered by this office last year on this subject. You will note therein that the statute referred to in the opinion makes it the duty of the Treasurer to publish the list and hold the sale and that he may be penalized for his failure so to do.

Trusting this is the information you seek, I am

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.

By EDWARD J. PLUNKETT,
Assistant Attorney General.

112 STATE TREASURER

To J. M. Jackson, Sept. 15, 1931.

Since the State Treasurer is custodian of the funds of the State of Colorado, and of the University of Colorado, he should also have the custody of the securities purchased and held by the University.

113 STATE EMPLOYES RETIREMENT FUND

To C. C. Hezmalhalch, Sept. 16, 1931.

Concerning the administration of Ch. 157, S. L. 1931.

September 16, 1931.

Mr. C. C. Hezmalhalch, President,
State Empployes Retirement Board,
State Capitol,
Denver, Colorado.

Dear Mr. Hezmalhalch:

Regarding your letter of September 12th, requesting the opinion of this office on certain questions which have arisen from the administration of the State Employes Retirement Fund, I wish to advise you as follows:

(1) With reference to your question as to what extent, if any, credit should be given for prior service in calculating retirement annuities of state employes who had been regularly employed by the

state prior to August 1, 1931, a study of the retirement law discloses no direct statement concerning the credit of prior service, but Section 11 states that

> "Whenever any member of the Retirement Association has been an employe of the State for a period of twenty (20) years and has attained the age of sixty-five (65) years or when any such employe has been in the service of the State for a period of thirty-five (35) years, he or she shall be eligible for retirement for superannuation, but such retirement shall not be compulsory. * * *"

It is a reasonable presumption and I am of the opinion that credit for service prior to the enactment of the act should be given, but since the law nowhere states that such prior service shall have been continuous, the total of the periods during which the person was regularly employed by the state and received pay should be calculated and totalled in order to determine the amount of prior service to be credited in considering the employe's eligibility for retirement for superannuation.

(2) Your next question concerns the amount of credit to be given for prior service where an employe had left the service of the state prior to August 1, 1931, and re-enters the service of the state after that date. Section 2 of the act states that

> "* * * Membership in said Association shall be optional on the part of the present State employes but all new State employes except elective State officers shall become members of said Association by acceptance of State employment. * * *"

I am of the opinion that a former state employe who was not regularly employed and receiving pay on August 1, 1931, who re-enters the service of the state is to be considered as a new state employe within the meaning of Section 2, and thereby automatically becomes a member of the association, and that credit for prior service should be given in accordance with the rule laid down in paragraph (1) of this opinion.

(3) The question asked in the third paragraph of your letter involves the credit to be given a state employe who was in the service of the state on August 1, 1931, who leaves the service prior to August 1, 1933, without having joined the association, and thereafter re-enters the service. I am of the opinion that such an employe was a "present employe" within the provisions of Section 2 of the act which states that membership in said association shall be optional on the part of present state employes "provided, however, that no present employe shall be eligible to apply for membership in the Retirement Association after August 1, 1933." Whenever a "present employe" leaves the service of the state prior to August 1, 1933, without having taken advan-

tage of the privilege of joining the association and thereby preserving his credit for prior service, he has waived that privilege and forever lost that opportunity, and if he re-enters the service after August 1, 1933, his status is the same as that of a new employe who has never been employed by the state. He automatically becomes a member of the association without any credit being given for prior service in the calculation of retirement annuities.

(4) With respect to the application which the retirement board has received from an individual who had been regularly employed by one of the state departments and who has been on sick leave for a period of three years, but who has not yet returned to the service of the state and whose civil service rights have been preserved, I am of the opinion that this individual was not a state employe regularly employed and receiving pay from the state on August 1, 1931, within the contemplation of the act, and, therefore, is not eligible for membership in the retirement association until such time as the individual may return to the service and be placed upon the pay roll. Since the retirement association law makes no reference to civil service, the status of a person with respect to civil service rights need not be considered in any consideration of a person's rights under the retirement association law. In the event this individual returns to the service of the state at any time, credit should be given for prior service in accordance with the rules laid down in paragraph (1) of this opinion.

Very truly yours,
CLARENCE L. IRELAND,
Attorney General.
By FRED A. HARRISON,
Deputy Attorney General.

114 SCHOOLS

To A. J. McFarland, Sept. 16, 1931.

A County High School may issue refunding bonds at a rate of interest lower than that borne by the bonds to be refunded, without submitting the matter to a vote of the people; but no other school district can issue such bonds without a vote of the qualified electors of the district.

115 JUSTICE OF PEACE

To Chas. M. Armstrong, Secretary of State, Sept. 17, 1931.

Where persons before justices of the peace or police magistrates are mistreated their remedy is to take an appeal to the proper county court.

116 STATE TREASURER

To John M. Jackson, Sept. 18, 1931.

The State Treasurer in loaning funds in his hands must exercise necessary and reasonable diligence and care in obtaining the highest rates of interest possible in behalf of the State. (Sec. 67, C. L. 1921.)

117 STATE TREASURER

To J. M. Jackson, Sept. 18, 1931.

In purchasing securities for the State Employes' Retirement Fund, the State Treasurer does not need a warrant from the State Auditor. (Sections 5 and 6, Ch. 157, S. L. 1931.)

118 CORPORATIONS

To Chas. M. Armstrong, Sept. 22, 1931.

Under Sec. 4, Sub-sec. 5 and Sec. 8, Sub-sec. A, of Chapter 70, S. L. 1931, a specific number of directors must be designated in the certificate of incorporation, and the number cannot be less than three. It is further necessary that the names of the directors must be set forth in the certificate of incorporation.

119 SCHOOLS

To A. J. McFarland, Oct. 1, 1931.

Sec. 8337, C. L. 1921, provides that the cost of maintaining kindergartens *shall* be paid from a *special school fund* of the district. The kindergarten teacher's salary is included in the term "maintenance." (Secs. 8337, 8446, 8447, 8448, 8505, C. L. 1921.)

120 SCHOOLS

To F. B. Kesling, Oct. 3, 1931.

Under Sec. 8310, C. L. 1921, a portion of one school district may be detached from said district and annexed to a contiguous district, by the county superintendent, upon petition of a majority of the legal voters resident within the territory to be so annexed, subject to the limitations of Sec. 8309, C. L. 1921.

121 STATE ROAD FUNDS

To W. D. MacGinnis, Oct. 3, 1931.

An audit of the records of the various counties with reference to their expenditure of state road funds should be made for each calendar or county year.

October 3, 1931.

Hon. W. D. MacGinnis,
State Auditor,
Capitol Building,
Denver, Colorado.

Dear Sir:

Pursuant to your oral request for an opinion as to when

under Section 2, Paragraph 2, of House Bill No. 537, Chapter 53, Session Laws, 1931, an audit of the records of the various counties with reference to their expenditure of state road funds should be made and as to how far back said audit should go, please be advised as follows:

Section 2, Paragraph 2, of said act reads as follows:

> "It shall be the duty of the State Auditing Board acting by and through the State Auditor to audit *annually* the records of the several Counties in the use and expenditure of all State Road Funds, and the proportionate part of the necessary expenses of the State Auditor's *annual* audit of the records of the County Treasurers applicable to the audit of the road funds shall be paid from the funds of the State Highway Department. Any moneys unlawfully obtained by the Counties or unlawfully expended by the Counties from the road funds shall be returned to the State Treasurer for the use of the State Highway Funds, and the Attorney General is hereby authorized and directed to take appropriate action to recover such funds for the State Highway Fund."

The act makes no statement as to when the first audit shall be made, nor does it state how far back said audit shall go. The words "annual" and "annually" are, however, used.

It has been suggested that the legislature intended that the first audit should go back to the time when the counties were first allotted money by the state, and that said audit should cover the expenditure by the counties of all state road funds heretofore received by them.

We do not believe such a construction can be placed upon the act.

The Colorado Supreme Court in the case of Ducey v. Patterson, 37 Colo. 216, 226, said:

> " 'The first and chief aim and object of a court, in constructing a statute, is to ascertain the intention of the legislature, and in every country where the supremacy of law is recognized, it is far more reasonable to suppose that this intention was to legislate for the future rather than the past. Every reasonable doubt, as to such intent, must be resolved against, rather than in favor of, the retroactive operation of the statute. The leading case upon this subject in this jurisdiction is *Railway Co. v. Woodward*, 4 Colo. 162. In this, Chief Justice Thatcher said: "But when legislatures, even in the absence of a constitutional interdict, pass laws which might be so construed as to give them a retrospective effect, courts will not so interpret them, unless the intention of the law-making

power is clearly declared. With caution and distrust courts give retrospective statutes effect even where the law-giver has constitutional power to enact them." To the same effect is *Day v. Madden,* 9 Colo. App. 464, in which Judge Bissell discussed the subject and affirmed the same rule in an able and exhaustive opinion. In U. S. v. Heth, 3 Cranch 399, it was said, in the opinion of the court: "Words in a statute ought not to have a retrospective operation, unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied." The rule is founded on the soundest principles of public policy and its reason is manifest.'"

We find no words in the statute which indicate that the legislature intended that the act should be retrospective. The act, however, states that an audit shall be made *annually.*

Inasmuch as the act in question became effective July 16, 1931, it is our opinion that the act must be interpreted to mean that the legislature intended that an audit should be made for the calendar year of 1931, which is also the fiscal county year, and for each subsequent calendar or county year, and so advise you.

Aside from the use of the words "annual" and annually, the act is silent as to when the audits shall be made. It is our opinion, therefore, that the annual audit can be made at the convenience of your office or when ordered by the Auditing Board, provided it is made as aforesaid.

Very truly yours,
CLARENCE L. IRELAND,
Attorney General.
By WALLACE S. PORTH,
Assistant Attorney General.

122 LEGAL NEWSPAPER

To Edwin A. Bemis, October 3, 1931.

The merger of a legal weekly newspaper with a daily newspaper which is not legal would not make the newly created newspaper a legal newspaper. (Ch. 113, S. L. 1931.)

123 IRRIGATION DISTRICTS

State Board of Land Commissioners, October 3, 1931.

Lands in an irrigation or drainage district are unincumbered, save when the special taxes which have been levied, and are due and payable, have not been paid. Special taxes for an irrigation or drainage district, which will be due and payable at future dates, are in the same category as general taxes, namely, that they constitute no lien or encumbrance until such time as they

have been assessed and are payable. (Citing Ch. 169, S. L. 1929, and Henrlylyn Irrigation District v. Thomas, 64 Colo. 413, 173 Pac. 541.)

124 STATE PENITENTIARY

To F. E. Crawford, October 3, 1931.

Concerning the powers, duties, and functions of the warden, and of the board of corrections.

October 2, 1931.

Mr. F. E. Crawford,
Warden, State Penitentiary,
Canon City, Colorado.

Dear Sir:

In your letter of the first inst., you have requested the Attorney General's office for an opinion as to the respective powers, duties and functions of the Board of Corrections and the Warden in relation to the state penitentiary, and the manner in which those powers and duties should be exercised, and you are advised as follows:

Section 537, Compiled Laws of 1921, as amended by Section 2, Chapter 63, Session Laws of 1931, provides as follows:

> "Said board shall have full control, management and supervision of the Colorado State Penitentiary, the Colorado State Reformatory, and Colorado State Hospital; and over all property, grounds and buildings of said institutions; and shall make all necessary rules and regulations for the government, management, police and discipline of said institutions."

Section 754 of said Compiled Laws provides:

> "The organization of the state penitentiary shall consist of a warden and such guards, turnkeys, overseers and clerks as may, in the opinion of the Colorado board of corrections, be necessary, and a parole officer, physician and surgeon and a chaplain. The warden shall be appointed by the governor and all other officers and employes shall be appointed or employed by the warden with the consent of the Colorado board of corrections. * * *"

These two sections must be read and considered together, in order to determine the respective powers and duties of the Board of Corrections and the Warden of the state penitentiary. These sections, together with Sections 538, 755, 756, 757 (as amended by S. L. 1931, Chap. 69, page 219), set forth the respective duties of the Board of Corrections and the Warden of the penitentiary.

The Board of Corrections may act and function only as a body. The individual members of the Board as such have no power or authority whatever over the control and jurisdiction of the

state penitentiary. Construing the language of Section 537 as amended, it means that the Board of Corrections has the full control, management and supervision of the state penitentiary as an administrative Board, and it may act in relation to the penitentiary, in its capacity as a body and not as individuals. No other construction may be placed upon the statutes.

Pursuant to Section 754, above mentioned, the organization of the state penitentiary shall consist of the warden and such other officers and employes as shall be appointed or employed by the Warden, with the consent of the Board of Corrections. All subordinate officers and employes, therefore, are responsible directly to the Warden and not to the Board of Corrections.

Since the Board of Corrections can only act as a body, it is the duty of that body to promulgate rules and regulations, in lawful meeting, for the government, management, police and discipline of the state penitentiary, which rules and regulations should be formally transmitted and delivered to the Warden for his guidance in the administration of the affairs of that institution. The power and duty to put into effect and carry out such rules and regulations, as directed by the Board of Corrections, is exclusively the function of the Warden, and no member of the Board of Corrections, individually or otherwise, has a right to interfere therewith.

Section 537, as amended, considered together with Section 754, makes it the plain duty of the Board of Corrections to issue such rules and regulations to the Warden and no one else, since the Warden has been by law made responsible for the administration of the affairs of the penitentiary.

The warden is responsible for the safekeeping of all convicts and their property, and, in this particular, Sections 755, 6798 and 6799, C. L. 1921, should be considered.

By Section 755, the Warden, his assistants, the guards and keepers, are made conservators of the peace at the penitentiary, and as such have power of arrest. Under the terms of Section 6798, the Warden, or any officer or agent in the employ of the institution, is guilty of a felony, should they fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict committed to the penitentiary, and Section 6799 provides penalties for violations of the rules and regulations of the penitentiary by the Warden or other officers and employes of the penitentiary.

From these sections, it is evident the duty to keep the inmates in safekeeping is vested solely in the Warden and his subordinates. The duties and responsibilities of the Warden, as fixed by these sections, and the power to approve or disapprove good time allowances under Section 757, as amended, cannot be taken away from the Warden by the Board of Corrections, nor can the Board relieve the Warden of his liability to properly exercise his discre-

tion under Section 757; nor can it relieve him from his liability for his negligent failure to keep each convict in custody in accordance with Sections 6798 and 6799.

Section 754 makes it the duty of the Board of Corrections to fix the number of guards, turnkeys, overseers, etc., but the appointments thereof, as such guards, etc., is exclusively the duty of the Warden, with the consent of the Board of Corrections. This section means that the Legislature gave to the Warden the power to select the penitentiary personnel, the members of which he could confidently depend upon to co-operate with him and carry out his orders to the best interests of the institution, and the refusal of the Board to give its consent to the appointment of any individual must be based upon reasonable grounds and cannot be withheld for purely arbitrary or capricious reasons. The power of the Warden to appoint employes, necessarily carries with it the power to revoke such appointments, subject, however, to the rules and regulations of the State Civil Service Commission, and this power cannot be usurped by the Board of Corrections.

Unless the Board of Corrections, as a body, in lawful meeting, promulgates rules and regulations for the control, management and supervision of the penitentiary, pursuant to law, as hereinabove indicated, the Warden has full power and authority to do all acts and things necessary for the proper management and control of the institution and the inmates, according to his own discretion. But when the Board of Corrections adopts rules and regulations concerning the management and control, police and discipline of the institution, then it is the duty of the Warden to comply with such rules and regulations and to see to it that his subordinates do likewise, provided, that said rules and regulations do not conflict with the express statutory duties and powers conferred upon the Warden.

It has been brought to the attention of this office that a certain member of the Board of Corrections has been usurping the powers of the Warden at the state penitentiary and that this has been going on for some time. These powers of the Warden have been unlawfully exercised by said member of the Board of Corrections upon the excuse that you have failed to perform your functions and duties as Warden at the state penitentiary. But one wrong does not correct another wrong. It is your plain and clear duty to function as Warden of the state penitentiary so long as you are Warden and if there is any interference with that authority possessed by you according to law, it is your further plain and clear duty to bring it to the attention of the Governor of the State of Colorado, and to secure immediate action for the correction of such unlawful interference. If you are incapable and incompetent to perform the duties of Warden as prescribed by law and to carry out the rules and regulations of the Board of Corrections, as promulgated by it under the laws for your guidance in the adminis-

tration of the affairs of the penitentiary, it is the further plain and clear duty of the Board of Corrections to immediately ask the Governor of the State of Colorado to suspend you, pending the filing of charges before the Civil Service Commission, pursuant to a rule adopted by the Civil Service Commission, which reads as follows:

> "(5) The appointing power may, with the approval of the Civil Service Commission, at any time suspend without pay for ten days any employe who, in its judgment, is guilty of any misconduct or breach of discipline; and if, within that period, charges are filed with the Commission against such person, the Commission may continue such suspension until the Commission shall hear and decide the charges, which must be done within thirty days after same are filed."

During such period of suspension, it is the duty of the Governor of the State to make a provisional appointment of a warden to carry out the duties of the warden as prescribed by law, and the rules and regulations as promulgated by the Board of Corrections, but this power, under no circumstances, can be exercised by a member of the Board of Corrections as such. Until you are so removed as Warden of the penitentiary, the Governor, or the Board of Corrections, has no right or authority in law or otherwise to appoint an Acting Warden of the state penitentiary, or to delegate the powers, or any part thereof, to any other person.

The Attorney General would be derelict in his duty if he did not point out to you, the Board of Corrections and the Governor, under the conditions now existing at the penitentiary, that there must be in charge of the penitentiary, with full power to administer the affairs thereof, A WARDEN, as provided by law, without any interference in the performance of those duties by the Board of Corrections, or any other person, and the Warden must have, and is entitled to, the full co-operation of the Board of Corrections and the Governor.

In a recent article appearing in one of the daily papers, Mr. Wann, Member of the Board of Corrections, is quoted as saying:

> "The present board made an effort to get (you) Crawford to function, and, failing in its efforts, was obliged to name Roy Best as deputy warden with full control of the discipline within the walls."

If, in fact you did fail to function according to law and pursuant to any rules and regulations which may have been promulgated by the Board of Corrections and communicated to you, certainly it was not the duty of the Board to name Roy Best, or any other person, as Deputy Warden,—that being peculiarly the power and function of your office to appoint all employes with the con-

sent and approval of the Board of Corrections,—and certainly the Board of Corrections, or anyone else, did not have the power to give said DeputyWarden full control of the discipline within the walls. But, on the other hand as heretofore pointed out, if the Board had sufficient reasons to conclude that you had failed to function, then it was the duty of the Board to ask the Governor to suspend you before placing anyone in charge of the prison as Warden with any control whatever derogatory to your command.

By constitutional direction, the supreme executive power of the state is vested in the Governor who shall take care that the laws be faithfully executed. In this instance, where the Governor is the only officer who can appoint the Warden, the laws controlling the government of the state penitentiary are peculiarly in the care of the Governor, to the end that they be faithfully executed. The Governor should see to it that the Board of Corrections and the Warden properly perform the duties as by law provided. In the event of their failure or refusal to do so, he should immediately remove either or both without hesitation as by law provided.

The conditions at the penitentiary are deplorable and if you cannot and will not function as Warden, then it is your plain duty to resign and permit the Governor to appoint a Warden who can and will perform the functions of that office. At the same time, the Board of Corrections should quit meddling with the duties of the Warden at the penitentiary, and if the Board of Corrections feels that it must take action because of the failure of the Warden to properly run that institution, it must act for the correction thereof according to law and not otherwise.

I have pointed out the respective duties of the Governor, the Board of Corrections and the Warden for the express purpose of clarifying the deplorable situation at this time existing at the state penitentiary and to bring about an orderly administration of that institution. The duties and powers, as prescribed by law, of such have herein been clearly defined and, if pursued, should result in harmony and co-operation in the management of that institution.

A copy of this opinion has been mailed to each of the members of the Board of Corrections and to his Excellency, William H. Adams, Governor of the State.

Respectfully submitted,

CLARENCE L. IRELAND,
Attorney General.

125 STATE TREASURER

To John M. Jackson, October 5, 1931.

In the absence of statutes making it your duty to collect the bond interest coupons or matured bonds, these administrative acts

are to be done by the board, bureau or department having control of the particular fund in question.

Any charges incurred in the collection of bond interest coupons or matured bonds belonging to a fund, are properly classified as a part of the cost of the administration of the fund, and said charges should be paid out of the moneys provided for the administration of said fund. (Ch. 157, S. L. 1931, Sections 335, 4514, 4516, C. L. 1921; Ch. 199, S. L. 1927.)

126 COUNTY EXTENSION AGENTS

To Chas. A. Lory, October 5, 1931.

The salary of an Assistant County Extension Agent may not be paid out of the general funds of a county, as his work is not for the public generally. (Citing Secs. 3024-3029; Robbins v. County Commissioners, 50 Colo. 615.)

127 MOTOR VEHICLES

To Charles M. Armstrong, October 5, 1931.

1. The exception in Sec. 108, Ch. 122, S. L. 1931, with reference to "implements of husbandry," cannot be construed to include a vehicle used in hauling or trucking.

2. The provisions of Secs. 142 and 143 with reference to violations of the act, and fines and forfeitures therefor, do not apply to cases involving a violation of city ordinances, and fines and forfeitures in such instances are not to be transmitted to the Motor Vehicle Department.

128 TAXATION

To State Board of Equalization, October 19, 1931.

It is not the province of the State Board of Equalization or the Colorado Tax Commission to allow or disallow claims of exemption from taxation. Whether or not any particular item of property is exempt from taxation is a question of law, to be determined by the courts unless the case is so clear that the taxing authorities feel justified in treating the subject as exempt. (Citing Art. X, Colo. Const., Secs. 7263, 7383, C. L. 1921, Opinion of this office to Tax Commission, dated Nov. 3, 1928, Union Pac. Ry. v. County Commissioners, 35 Fed. (2d) 785.)

129 FRUITS AND VEGETABLES

To John J. Tobin, October 21, 1931.

The term "Commission Merchant" as used in Sec. 1, Ch. 72, S. L. 1931, should be interpreted to mean not only persons brokers, exchanges, associations and corporations who receive any kind of farm produce on commission, or solicit consignments of the same, but also any of the above agencies who sell or offer for sale any kind of farm produce within this state.

130 **STATE EMPLOYES**

To George M. List, October 22, 1931.

The State Entomologist and his employes are eligible for membership in the State Employes' Retirement Association, but only on the basis of that part of their salaries paid from the appropriation for State Entomologist's office. (Ch. 157, S. L. 1931.)

131 **WORKMEN'S COMPENSATION**

To Clinton Turnbull, October 22, 1931.

Application of Workmen's Compensation Act to city firemen.

October 22, 1931.

Mr. Clinton Turnbull,
303 Jacobson Building,
Denver, Colorado.

Dear Sir:

In your letter addressed to the Attorney General you propound the following questions, to-wit:

> "First: When is a fireman off duty and when on duty? Some cities work under this law, a split shift as follows, 11 and 13 hours, 12 and 12 hours, and 24 hours on and 24 hours off duty. When is a fireman protected by the state compensation act?"
>
> "Second: A fireman relieved from duty and returning to his home and in uniform, is fatally injured, is his wife entitled to the compensation?"
>
> "Third: If a fireman off duty is injured so to be totally disabled and unable in the future to return to his duties as a fireman, be entitled to pension under the acts of 1903 and 1917?"
>
> "Fourth: Is a fireman, on tour on his time off, encountering a fire and participating in its activities and is permanently injured, entitled to compensation?"

In answering your inquiries, we must bear in mind that each compensation case differs as to facts. To this we may add that the Industrial Commission is the decider of facts and that their award is conclusive upon all matters of fact properly in dispute before the Commission where supported by evidence or a reasonable inference to be drawn therefrom. For this reason we can only state to you the general rules applicable and leave each particular claim to be determined by the fact finding body which is the Commission.

Since by our Colorado Workmen's Compensation Act, compensation can only be paid when the employe at the time of the accident is performing service arising out of and in the course of his

employment or where the injury or death is proximately caused by an accident arising out of and in the course of his employment the construction of the term "arising out of" and "in the course of" the employment becomes important. This the court has done in the Industrial Commission v. Anderson, et al., 69 Colo. 147, 150, as follows:

> "* * * In order that compensation may be due, the injury must both arise out of and also be received in the course of the employment. Neither alone is enough. It is not easy nor necessary to the determination of the case at bar to give a comprehensive definition of these words which shall accurately include all cases embraced within the act, and with precision exclude those outside its terms. It is sufficient to say that any injury is received 'in the course of' the employment, when it comes while the workman is doing the duty which he is employed to perform. It 'arises out of' the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work, and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work, and not common to the neighborhood. It must be incidental to the character of the business, and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence."

To this we may add the following quotation from the same case:

> "* * * The relief is so new that the tendency may be to inquire only as to the employment and the injury and to assume that these two factors constitute ground for compensation. But the essential connecting link of direct causal connection between the personal injury and the employment must be established before the act becomes operative. The personal injury must be the result of the employment, and the flow from it as the inducing proximate

cause. The rational mind must be able to trace the resultant personal injury to a proximate cause set in motion by the employment, and not by some other agency, or there can be no recovery. In passing upon this question, an humanitarian emotion ought not to take the place of sound judgment in the weighing of evidence. The direct connection between the personal injury as a result and the employment as its proximate cause must be proved by facts before the right to compensation springs into being."

Again the general rule is that no compensation is recoverable by an employe who is injured while on his way to or from his work but there are exceptions to the rule.

In Comstock v. Bivens, et al., 78 Colo. 107, 110, the court states:

"1. In *Industrial Commission v. Anderson*, 69 Colo. 147, 169 Pac. 135, L. R. A. 1918F, 885, we held *that in the absence of special circumstances bringing the accident within the scope of the employment, no compensation is recoverable by an employee who is injured while on his way to or from work.*"

After discussing prior Colorado decisions the court on page 110 also said:

"Honnold on Workmen's Compensation, section 114, says where an employee is doing something which, though not strictly in the line of his obligatory duty, is still doing something incidental to his work, and while doing the same is injured, the accident causing the injury may properly be held to arise out of and in the course of employment, and he will be entitled to compensation. We think the case in hand comes within the exception to the general rule. Indeed, in *Industrial Commission v. Aetna Co.*, 64 Colo. 480 (174 Pac. 589, 3 A. L. R. 1336), we said at page 487: 'All those things that he (the employee) is entitled to do by virtue of his contract he is for the purposes of the act employed to do, and they are therefore within his contracts of employment.'"

Under section 9371, C. L. 1921, which reads as follows:

"If any member of any paid fire department, while in the performance of his duty or by reason of service in such department shall become physically or mentally disabled and such disability shall seem to be of a temporary nature, said board of trustees shall retire such disabled person and the said board of trustees shall authorize the payment to such person monthly from the pension fund an amount equal to the monthly compensation

paid any such member as salary at the date of such disability; not, however, to exceed a period of one year. For the purpose of determining the physical or mental disability of any such member the board of trustees may personally examine the member or may appoint one or more physicians or surgeons to make an examination of the member and report their findings to the board, which report may be taken into consideration in determining whether said member is physically or mentally disabled. If any member or officer of any fire department shall become mentally or physically disabled so as to render necessary his retirement from service in such department, said board of trustees shall retire such member from service in such department, and he shall receive from the pension fund an amount equal to one-half (½) of the monthly salary received by him at the time he shall become so disabled."

We are of the opinion that if a member of any paid Fire Department while in the performance of his duty or by reason of service in such department shall become physically or mentally disabled and such disability shall seem to be of a temporary nature, he is entitled to an amount equal to the monthly compensation paid any such member as salary at the date of such diability not to exceed a period of one year. This is in the nature of pension for temporary disability. In event, however, a fireman *while in the performance of his duty or by reason of service in such department* shall become mentally or physically disabled so as to render necessary his retirement from service in such department the proper board of trustees shall retire such member from service in such department, and he shall receive from the pension fund an amount equal to one-half (½) of the monthly salary received by him at the time he shall become so disabled.

The question as to whether or not a member of any fire department was or was not injured while in the performance of his duty, or by reason of service in such department will necessarily have to be determined from the facts of each particular case. The same can be said as to the determination of the extent of his physical or mental disability.

Very truly yours,
CLARENCE L. IRELAND,
Attorney General.
By ARTHUR L. OLSON,
Assistant Attorney General.

132 SCHOOL OF MINES

To Dr. M. F. Coolbaugh, October 23, 1931.

A contract entered into between a state institution and a

national bank for the purpose of securing the funds of such institution on deposit in such bank would be void for the reason (1) that it would be setting aside assets of the bank for the benefit of one depositor and discriminating against other depositors; and for the further reason that unless the securities so deposited with the bank were in the possession of the institution, or in escrow as security, there would be no lien upon such securities or assets, favoring the institution as against other depositors at the bank.

133 PATENT RIGHTS

To M. F. Coolbaugh, October 23, 1931.

Under Federal decisions a patent perfected by an employe of the Government upon the Government's time and in Government shops belongs to the Government, and not to the individual citizen. Under the same circumstances a patent developed in a state institution would belong to the State of Colorado.

134 CORPORATIONS

To C. M. Armstrong, October 23, 1931.

A publication of a list of Defunct Corporations in a county in which no newspaper is published, may be made in the nearest newspaper of general circulation in the county and would be a sufficient publication upon which to base a declaration that such corporations are defunct.

135 RETIREMENT ASSOCIATION

To W. R. Freeman, October 26, 1931.

The State Dairy Commissioner is eligible to membership in the State Employes' Retirement Association in proportion to the amount of salary paid as such commissioner. (Ch. 157, S. L. 1931.)

136 GAS AND OIL

To Paul M. Williams, October 28, 1931.

Gasoline tax funds allotted to the respective counties must be kept in a separate fund, and must not be diverted to other funds or commingled with the general fund. (Ch. 139, S. L. 1929; Ch. 53, S. L. 1931.)

137 SCHOOLS

To Inez J. Lewis, October 30, 1931.

The courts have held that a teacher who has continued to receive, without protest, her salary at a rate less than the prevailing rate provided by statute, thereby waives any right she may have had at the time to insist that the salary should be fixed at a rate higher than that paid her. (Ryan v. New York, 177 N. Y. 271.)

138 TAXATION

To Edward A. Bemis, November 10, 1931.

Withdrawal of names from the delinquent tax list, after the first publication thereof, would be contrary to the provisions of Sec. 7405, C. L. 1921, even though the delinquent taxes have been paid subsequent to the first publication.

139 BARBERS

To Board of Examiners, November 12, 1931.

Under the provisions of Sec. 4746, C. L. 1921, as amended by the Act of 1929—sub. (c) a person who has practiced the barber's trade in this state for the requisite number of years, is entitled to a renewal of his license upon making application therefor and paying the fee. (Ch. 64, S. L. 1929.)

140 PENITENTIARY

To Thos. A. Duke, November 12, 1931.

In order to transfer an insane convict from the penitentiary to the Insane Asylum for treatment, the Governor may appoint members of the staff of the State Hospital or the Penitentiary who are practicing physicians to examine an insane prisoner, with a view to his transfer to the hospital for treatment. (Secs. 564, 572, C. L. 1921.)

141 COLORADO GEOLOGICAL SURVEY

To Dr. Coolbaugh, November 13, 1931.

Under Sec. 2, Ch. 6, S. L. 1931, the Colorado Geological Survey may enter into agreements, make reasonable charges for its services to the various state departments and pay the salaries and expenses of the State Geologist and its other employes from the proceeds thereof.

(Citing Cocknower v. U. S. 248. U. S. 405; Eley v. Miller, 7 Ind. App. 529; Cole v. White County, 32 Ark. 45; Commissioners v. Walker, 66 Colo. 312; State ex rel. Linn Co. v. Adams, 172 Mo. 1; Holman v. City of Macon, 155 Mo. App. 378; State v. Montoga, 20 N. M. 104; Henry v. Doles, 186 Wis. 622; Leckenby v. Post Printing Co., 65 Colo. 443.)

142 INSURANCE

To Jackson Cochrane, November 13, 1931.

Where payment of a tax is made by an insurance company under protest, but without the claim that such tax is illegal or excessive, the state treasurer cannot make refund of such tax without an order of court. (Sec. 2486, C. L. 1921; Cochrane v. National Life Ins. Co., 77 Colo. 243; Cochrane v. Bankers Life Ins. Co., 30 Fed. (2d) 918; 26 R. C. L. Sec. 455.)

143 FOODS

To W. R. Freeman, November 14, 1931.

The law does not require the operators of counter ice cream freezers to secure the license provided for by Sec. 9, Ch. 97, S. L. 1923; but these freezers should be inspected by the State Food and Drug Commissioner for the purposes of sanitation.

144 STATE ENGINEER

To M. C. Hinderlider, November 16, 1931.

The statutes of this state do not empower the State Engineer to conduct a fact finding investigation to determine priorities between ditch owners in the waters of a natural stream or its tributaries. This power is vested in the courts. (Citing Sec. 1804, C. L. 1921; Chew v. Fremont County, 18 Colo. App. 162.)

145 DEPENDENT CHILDREN

To J. L. McMenamin, November 18, 1931.

Funds inherited by children who are or have been inmates of the State Home for Dependent and Neglected Children may not be paid out by the Superintendent without a proper order of court.

146 INSURANCE

To Jackson Cochrane, November 18, 1931.

An instrument offered for sale by an insurance company which is called an investment bond, but which is in fact a contract for the sale of stock, is misleading, and such company should not be permitted to offer the same for sale. (Sec. 2505, C. L. 1921.)

147 WORKMEN'S COMPENSATION

To Jos. W. Hawley, November 24, 1931.

One who owns timber land and contracts the timber to one man who in turn makes contracts with several others to cut and haul timber, should, under Secs. 49 and 50 of the Workmen's Compensation Act, insure and keep insured his liabilities under said act, unless his contractors or sub-contractors have provided themselves with compensation insurance. (Secs. 4423, 4424, C. L. 1921.)

148 COLLECTION AGENCY

To C. M. Armstrong, December 1, 1931.

Persons, firms or corporations who solicit accounts for collection, and in connection with the collection of such accounts make certain investigations and then either effect collections or

failing to do so repossess cars or other property, come within the provisions of the Collection Agency Law. (Ch. 62, S. L. 1931.)

149 CIVIL SERVICE

To Thos. A. Duke, December 8, 1931.

The Civil Service Law does not provde for the abatement of the salary of employes in the classified service before final discharge after hearing.

December 3, 1931.

Mr. Thomas A. Duke, President,
Colorado Board of Corrections,
Pueblo, Colorado.

Dear Sir:

We have your letter of the 2nd inst., in which you ask concerning the salary due Mr. Crawford as Warden, pending the final determination of charges preferred against him before the Civil Service Commission.

Section 539, Compiled Laws of 1921, provides, in part, as follows:

> "The wardens of the state reformatory and state penitentiary, each, shall receive twenty-five hundred dollars per annum, and their subsistence under the direction of the Colorado board of corrections, as full compensation for their services."

F. Eugene Crawford was appointed Warden of the State Penitentiary at the above salary. We are, also, advised he was certified by the Civil Service Commission of Colorado to that position.

Section 130 of said laws provides that "Persons in the classified service shall hold their respective positions * * *" and "they shall be removed or disciplined only upon written charges * * * to be finally and promptly determined by the Commission upon inquiry and after an opportunity to be heard."

The Civil Service provisions of the statute nowhere authorize that an employe or official in the classified civil service may be deprived of his statutory salary before discharge after a hearing.

We call attention to the case of *Emmitt v. Mayor, etc.*, 128 N. Y. 117, 119, in which the court says:

> "Here the plaintiff was appointed by the aqueduct commission an inspector of masonry and his employment in that capacity was evidenced by a written certificate of appointment. * * * Besides, it appears that his candidacy for the office must have been fortified by a certificate from the civil service commission and his qualifications further certified to by at least three of the aqueduct commissioners. Such an employe upon the work cannot be

classified, or regarded, as a temporary or occasional laborer. He fills an office with certain more or less important responsibilities attached to it, and he becomes entitled to receive the compensation as it was fixed by the commissioners, until they see fit to discharge him. That power, unquestionably, is inherently theirs and that is not disputed; but where is to be found the power to suspend the incumbent of the office without pay? Nothing in the act, vesting the commissioners with powers, leads us to infer such a power as to suspend an officer without pay. * * *.

"* * * In my opinion, therefore, as the office of inspector was one which the act empowered the commissioners to fill by appointment, the incumbent derived from his office the right to receive the emoluments belonging to it, until discharged; and that temporary, or indefinite, suspension without pay was not within the powers of the commissioners to effect arbitrarily."

In our opinion the order of suspension issued by Governor Adams on October 8, 1931, pending the determination of the charges against Mr. Crawford as Warden before the Civil Service Commission, did not extinguish the right of Mr. Crawford to his salary as such Warden prior to final discharge by the Civil Service Commission.

We are further of the opinion that until such time as his case is finally decided by the Civil Service Commission, vouchers should be made at the regular intervals in favor of F. Eugene Crawford as Warden for his salary and forwarded through the usual channels.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

By SIDNEY P. GODSMAN,
Assistant Attorney General.

150 MOTOR VEHICLES

To Chas. M. Armstrong, December 15, 1931.

The term "chauffeur" as used in Ch. 122, S. L. 1931, defined.

151 MOTOR VEHICLES

To Chas. M. Armstrong, December 21, 1931.

Justice, county and district courts are the only courts in this state empowered to try cases for violation of state laws.

A police magistrate has authority to try cases arising out of violation of ordinances of his own city or town.

There is no authority under the law for the noting of convictions on operators' license cards, and no judge, justice of the peace or police magistrate has any authority to make a note of conviction on any such card. (Ch. 122, S. L. 1931.)

152 MOTOR VEHICLES

To Chas. M. Armstrong, December 22, 1931.

Sec. 29-c of Ch. 122, S. L. 1931, provides that the Secretary of State shall not register such vehicles until and unless the owner shall agree to carry insurance . . . and if the owner shall fail to make such agreement, until and unless he shall demonstrate to the Secretary of State his financial ability to respond in damages as provided by the act.

153 MOTOR VEHICLES

To Chas. M. Armstrong, December 22, 1931.

The fee provided for by Sec. 54-b of Ch. 122, S. L. 1931, shall be paid over by the county clerks to their respective county treasurers, to be kept in their separate fund and be disposed of as provided by Sec. 7902, C. L. 1921.

154 SCHOOL OF MINES

To M. F. Coolbaugh, December 22, 1931.

An attempt to establish residence for the purpose of avoiding payment of tuition fees is not a bona fide expression of intention as contemplated by law. (Sec. 8040, C. L. 1921.)

155 SCHOOL OF MINES

To M. F. Coolbaugh, December 23, 1931.

The Board of Trustees of the School of Mines has the right to change the course of study or curriculum in keeping with educational and scientific development.

156 TAXATION

To Thos. A. Nixon, December 29, 1931.

Application of reduction made by the State Board of Equalization.

December 29, 1931.

Mr. Thomas A. Nixon,
County Attorney of Weld County,
Greeley, Colorado.

Dear Mr. Nixon:

Replying to your letter of the 26th inst., in reference to the assessment of manufacturing machinery and the application of the reduction made by the State Board of Equalization to such assessments, we will answer the questions in the order in which they appear in your letter.

The solution of the first question is the most important and will make the determination of the other questions easier.

Section 7193, C. L. 1921, defining real estate for the purpose of taxation, provides, inter alia, as follows:

> "The term 'improvements' includes all buildings, water rights, structures, fixtures, and fences erected upon or affixed to land, whether title has been acquired to said land or not."

In the case of *C. F. & I. Co. v. Pueblo Water Co.*, 11 Colo. App. 352, the court held, quoting from the syllabus, as follows:

> "The fact that property is listed for taxation by the assessor, under the head of personal property, does not conclude the grantee thereof from showing that in fact it was realty, in an action between the grantee and grantor to determine which party is liable for the taxes thereon.
>
> "Under our statute, sec. 2830, Gen. Stats. (Section 7193, C. L. 1921) and irrespective of such statute, water mains, pipes and hydrants laid in the public streets and alleys of a city, and the machinery connected therewith and necessary to the operation of a waterworks plant, are realty for the purpose of taxation."

A case directly in point upon the questions involved herein is the case of *Gibson Co. v. McNichols*, 51 Colo. 54. In this case the schedule returned to the assessor listed certain machinery of a mining company as personal property; in making out the assessment roll the assessor designated the machinery as personal property; the plaintiffs had entered into a contract between themselves, treating the machinery as personal property and subject to removal. The treasurer issued a distraint warrant against this machinery for the amount of the unpaid personal property tax. The plaintiffs sought in this case to enjoin the assessor and sheriff from seizing the property. The court, in its opinion, said:

> "When a building is erected for a particular purpose, and machinery placed therein reasonably necessary to effectuate that purpose, and in some substantial manner attached to such building, it becomes part of the realty. Roseville A. M. Co. v. Iowa G. M. Co., 15 Colo. 29; Farmers' L. & T. Co. v. Minn. E. & M. Co., 35 Minn. 543; Symonds v. Harris, 81 Am. Dec. 552; 51 Me. 14; Laflin v. Griffiths, 35 Barb. (N. Y.) 53; Parsons v. Copeland, 38 Me. 537; Gray v. Holdship, 17 Am. Dec. 680; 17 S. & R. 413.
>
> "Applying this test to the facts of the case at bar, we think it is clear that the Fru-Vanner tables were fixtures. The mill building certainly is real estate. It was constructed for the purpose of enclosing the machinery

placed therein; without the machinery it would be useless as a mill for the reduction of ores. The purpose of the owners, in erecting the plant, which includes the building and the machinery, was to construct a concentrating plant. To render it suitable for the use designed, the tables were placed therein and fastened to the building in such manner, and to such an extent, as would render them adaptable to promote the ends for which the entire plant was constructed. To remove the tables would reduce the efficiency of the mill, if not entirely destroy it, just as much as to remove other distinct pieces of machinery therein, like the rolls, the crushers, or the motive power, all of which, and many other appliances, are essential and necessary to assemble, place, arrange and connect as a whole, in order to construct, complete and operate a plant for the reduction of ore.

"The fact that the return to the assessor made on behalf of the owners stated valuations of improvements one sum, and machinery another, or that the mill, machinery and improvements were returned under one valuation, does not, when considered in the light of the fact that the machinery was unquestionably a part of the realty, establish that it was personal property; neither does the fact that the assessor designated the machinery upon the assessment roll as personal property cut any figure. His mistaken notion that the machinery was personal property, when, in fact, it was part of the real estate, cannot change the real situation or the real facts."

It seems to us that this case conclusively decides the first question.

The buildings of sugar factories, canning factories, flour mills, etc., are erected and designed for a particular purpose and the machinery that is placed in them is necessary to carry out that purpose.

Under the rule announced above and under our statute, we are of the opinion that manufacturing machinery and fixtures and the buildings in which such machinery and fixtures are located should be classified as improvements on real property and assessed as such. Further it may be well to state at this point that in both cases cited above, the fact that the assessor had classified machinery as personal property and the fact that the owner in his schedule returned to the assessor had so classified the machinery,—to use the words of Justice Gabbert,—"does not cut any figure," and "his mistaken notion that the machinery was personal property, when, in fact, it was part of the real estate, cannot change the real situation or the real facts."

Answering your second question—Buildings used in manufacturing should be classified as improvements on real estate and assessed as such.

Third question—Improvements on real estate used for manufacturing purposes, as described above, are entitled to 5% reduction from the 1931 assessment under the resolution adopted by the State Board of Equalization.

Fourth question—The fact that the taxpayer has separated on his schedule machinery and fixtures from improvements on land, and the fact that they may be classified by the assessor under "Manufacturing machinery and equipment" and "Capital employed in manufacture" is not controlling and cannot change the real situation or the real facts.

Hoping the above will be of some assistance to you, we are,

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.
By FRED A. HARRISON,
Deputy Attorney General.

157 MOTOR VEHICLES

To W. D. MacGinnis, December 30, 1931.

The motor vehicle department is not confined in its expenditures to the appropriations made in the General Appropriation Act at pages 56 and 57, 1931 S. L., but may pay the expense of the purchase of license plates from the motor vehicle registration fees. (Ch. 122, S. L. 1931.)

158 MOTOR VEHICLES

To Chas. M. Armstrong, December 31, 1931.

Persons employed by the State Highway Department as overseers, who incidentally to their duties may at times drive a truck are not chauffeurs within the meaning of the act.

This would also probably apply to drivers of trucks of cities and counties, although it would have to be determined from the facts in each case whether or not such drivers are chauffeurs within the meaning of the act. (Ch. 122, S. L. 1931.)

159 MOTOR VEHICLES

To C. R. Furrow, December 31, 1931.

A chauffeur is one who is employed and paid by the owner of a motor vehicle to drive and attend to the car. (Ch. 122, S. L. 1931.)

160 TAXATION

To W. L. Sales, January 4, 1932.

Beet dumps owned and operated by The Great Western Sugar Company should be assessed as improvements on agricultural land.

161 TAXATION

To Colorado Laundry Co., January 4, 1932.

Where a building is leased and machinery installed for laundry purposes, the machinery would not become part of the real estate and could not be assessed as such. If a building is erected and machinery installed therein for a specific purpose, the case would be different, and the machinery might be taxed with the real estate.

162 MOTOR VEHICLES

To J. P. Allen, Warden, January 5, 1932.

Inmates of the State Penitentiary who may be used to drive cars and trucks, are not required to be provided with chauffeur's license.

The Code requires that chauffeur's license should be obtained by those whose principal employment is the operation and care of motor vehicles, for which employment they are paid. (Ch. 122, S. L. 1931.)

163 FRAUDULENT PRACTICE ACT

To Chas. M. Armstrong, January 5, 1932.

The fee provided for by Sec. 14 of Ch. 95, S. L. 1931, may be held in a separate fund by the Secretary of State and used by him for necessary expenses incurred in connection with the administration of the act.

164 COUNTY WARRANTS

To Alexander Bowie, January 12, 1932.

The County Treasurer is not authorized to pay warrants drawn on a particular fund until current levy has been made by county commissioners.

165 MOTOR TRUCK LICENSES

To Worth Allen, January 14, 1932.

The State Treasurer would not be warranted in making refunds of taxes paid for permits, pending decision in regard to constitutionality of Ch. 120, S. L. 1931.

166 TAXATION

To Capt. S. A. Clark, January 18, 1932.

Personal property owned by a person in the Federal Military service, and which is located in Denver on April 1 of any year is subject to taxation by the City and County of Denver. (Secs. 494, 7249, 7180, C. L. 1921; opinion of this office dated Nov. 10, 1920, to Colorado Tax Commission.)

167 CORPORATIONS

To Coudert Bros., January 19, 1932.

A foreign trust company may act as executor or testamentary trustee.

168 UNIVERSITY OF COLORADO BONDS

To Regents, University, January 21, 1932.

Bonds issued by the University of Colorado, pursuant to Chapter 155, S. L. 1931, are eligible for investment of the Public School Income Fund and the State Compensation Insurance Fund. (Sec. 9, Art. 9, Colo. Const.; Ch. 169, S. L. 1929; Ch. 199, S. L. 1927.)

169 PENITENTIARY

To. Thos. A. Duke, January 26, 1932.

There is no appropriation out of which the expense of transferring women prisoners in the penitentiary, to prisons in nearby states can be paid.

Such prisoners are, by order of court, committed to the care of the Warden at the State Penitentiary, and neither the Board of Corrections or the Warden have authority to consign prisoners to other states.

170 WORKMEN'S COMPENSATION

To The Industrial Commission, January 26, 1932.

Sec. 4353, C. L. 1931, does not apply to home rule cities.

171 CIVIL SERVICE

To C. M. Armstrong, January 30, 1932.

The Civil Service Commission may authorize a temporary appointment in an emergency, but cannot say who the appointee may be, for the reason that a temporary or provisional appointee is not under Civil Service.

The salaries of temporary appointees may be fixed by the appointing power except where fixed by statute.

The appointing power may make temporary appointments where there is no eligible list under the classified civil service without consulting the Civil Service Commission.

172 STATE SCHOOL FUND

To State Board Land Commissioners, February 3, 1932.

Bonds issued by the University of Colorado under authority of Ch. 155, S. L. 1931, are eligible for investment of Public School Fund. (Ch. 169, S. L. 1929.)

173 CORPORATIONS

To Chas. M. Armstrong, February 3, 1932.

Copies of certificates of incorporation may be certified by the Secretary of State, when they are presented. (Sec. 5, Ch. 70, S. L. 1931.)

174 SCHOOLS

To W. B. Giacomino, February 5, 1932.

Neither the teacher nor the school district may legally violate Sec. 8450, C. L. 1921.

County and municipal officers may not violate Ch. 158, C. L. 1921. (Secs. 7 and 15, Art. 14, Colo. Const.)

175 STATE LAND BOARD

To State Land Board, February 8, 1932.

The State Land Board may at any time sell any of the securities in the Public School Permanent Fund or the Public School Income Fund if in the judgment of the Board it would be to the advantage of said funds to do so.

February 6, 1932.

State Board of Land Commissioners,
Capitol Building,
Denver, Colorado.

Gentlemen:

We have your letter of the 4th, wherein you ask as follows:

"Inasmuch as the statutes give this Board the authority to invest the Income School Fund will you please give us an opinion on the following proposition?

"Has the State Board of Land Commissioners the right to sell certain bonds now held by the Permanent School Fund to the Income Fund?"

Section 1 of Chapter 169, of the 1929 Session Laws of Colorado, in part reads as follows:

"All school funds of the state, whether permanent or income, unless otherwise disposed of by law, shall be invested as directed by the State Board of Land Commissioners in any one or more, or all, of the following ways, at the discretion of said Board:"

Said section then provides six classes of securities in which the investments may be made.

It is thus seen that the investment of the school funds of this state, whether permanent or income, is under the control of your Board and at your discretion, the only restriction being that said funds must be invested in certain designated types of securities.

The control of a fund must be interpreted to mean not only the investment of that fund, but also a constant vigilance over it to see

that the securities constituting said fund, continue to be safe investments and therefore there must be an implied right on the part of your Board to sell any of the securities constituting said school fund, which have been previously purchased.

Section 3 of Article IX of our State Constitution provides not only that the school fund shall remain forever inviolate and intact, but also that "the state shall supply all losses thereof that may in any manner occur."

To say that your Board cannot sell any of the securities constituting the school fund, would place the fund in jeopardy, as it is well known that many securities which were safe when purchased, subsequently because of changed conditions, become of questionable value. In designating certain types of securities in which the school funds may be invested, the Legislature has endeavored to safeguard the fund. But even so, it may be found from time to time that there are securities constituting said fund, which because of changed conditions have become less desirable than others which are available, and it is our opinion that your Board not only has the right to sell the less desirable securities held, in either the permanent or income fund, but would be derelict in its duty if it did not do so. Otherwise losses might occur, which would have to be made good by the State.

We appreciate that the bonds in question are being sold to the income fund not because they are not desirable securities, but because of a desire on the part of your Board to keep a portion of the overlapping income funds profitably invested, and our only reason in discussing the matter at the length we have is because of a previous opinion given by this office to the State Treasurer on August 18, 1927, wherein it was stated that your Board had no right to permit the redemption of an investment prior to its optional or due date. This former opinion was based upon a theory, in which we cannot concur, that your Board has no right to sell or permit a change in an investment once it has been made. In support of the former opinion the decision of the Supreme Court of Nebraska reported as In Re School Fund, 15 Nebr. 684, 687, 50 N. W. 272, was cited. We find that the opinion in this Nebraska decision was written almost fifty years ago, and yet we are unable to ascertain that it has ever been followed or even cited in any reported case.

In view of modern day business practices and changing conditions, it is doubtful if even the Supreme Court of Nebraska would follow its former decision. Moreover, the Board of Commissioners in charge of the school funds in Nebraska has no discretion in the matter of investments, but only the general management of said funds. We do not, therefore, feel that the views expressed by the Nebraska Supreme Court are applicable to the situation existing in our state, where by law your Board is vested

not only with the control of said school funds, but also with discretion.

In concluding our opinion we might say further that inasmuch as your Board is given the right to invest the School Income Fund, and in view of the fact that the law further provides for a semi-annual apportionment of said income fund, that it must be inferred that your Board can liquidate the securities in said income fund at such times as it becomes necessary to make the apportionments.

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.

By WALLACE S. PORTH,
Assistant Attorney General.

176 COLORADO STATE HOSPITAL

To F. H. Zimmerman, February 9, 1932.

The court committing persons to the insane asylum has continuing jurisdiction, and may modify its order of commitment if such becomes necessary. (Ch. 132, S. L. 1925; opinion of this office dated Nov. 5, 1928, to F. H. Zimmerman.)

177 SCHOOLS

To F. E. Rice, February 16, 1932.

Concerning Sec. 8451, C. L. 1921, relating to minimum salaries.

February 16, 1932.

Mr. F. E. Rice.
Secretary, School District No. 19,
Rocky Ford, Colorado.

Dear Sir:

Your letter of February 5, 1932, concerning the minimum salary law for teachers, section 299 of School Laws 1927, is acknowledged.

You ask this office for an opinion upon the following question:

> "If a teacher signed a contract agreeing to teach nine months for less than these figures has a school board a right to employ her?"

We are of the opinion that in the event the school board should require teachers to have educational requirements of either two years or four years, the district is bound to pay the salaries provided by the statute referred to above. However, should the district require no such educational qualifications by the teacher applying for the position and it should subsequently appear that the teacher in question has such qualifications this fact would not prevent the district from employing the teacher at the lower

salary provided however that the teacher consented to accept said contract at the salary specified therein.

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.

By HAZEL M. COSTELLO,
Assistant Attorney General.

178 OIL AND GAS

To Malcolm Erickson, February 17, 1932.

Ch. 125, S. L. 1931, does not seem to preclude local inspection by cities and towns under ordinances. Sec. 26 of the said act, however, does provide for the sealing by the State Oil Inspector or his deputies of mechanical devices for the measurement of oil or gasoline and prescribes a penalty for changing or tampering with such seal.

179 TAXATION

To Colorado Tax Commission, February 24, 1932.

"Suburban tracts" are included in the classification of farm lands outside of cities and towns, and under the action of the State Board of Equalization, are entitled to a reduction of 20%. (MacGinnis, et al. v. Denver Land Co., 90 Colo. 72).

180 SCHOOLS

To E. Earl Forbes, March 2, 1932.

The school levy should be made to cover the calendar year.

If teachers find it necessary to discount their warrants, they must assume the loss.

181 COUNTY CLERKS

To D. L. Yarnell, March 2, 1932.

Analysis of duties of county clerks under Ch. 152, S. L. 1931.

182 STATE PENITENTIARY

To Colorado Board of Corrections, March 9, 1932.

It is the duty of the Warden to inflict the death penalty when pronounced, and he receives no additional compensation for such services. (Sec. 7154, C. L. 1921.)

183 COUNTY WARRANTS

To F. R. Dunlavy, March 9, 1932.

County warrants cannot be registered when there is sufficient money to the credit of the proper fund, at the time the warrant is presented to the county treasurer for payment.

Mr. Frank R. Dunlavy, March 9, 1932.
County Treasurer,
Trinidad, Colorado.

Dear Sir:

Your letter of March 4th, requests an opinion from this office concerning the legality of the action of the County Treasurer in paying registered county warrants from the revenue derived from the taxes of 1931.

You further state that the County Commissioners have levied a 65/100 mill levy for registered unpaid warrants. We wish to state that Sections 8853 and 8854, C. L. 1921, requires that the money raised by a special levy for the payment of outstanding warrants must be kept in a special fund and must be used for that purpose *only*.

The Treasurer is liable on his official bond if he fails to keep the several tax funds separate, or if he pays warrants out of the wrong fund.

In answer to your question as to the payment of registered warrants from current revenues, we wish to state, that warrants may not be legally registered whenever there is sufficient money to the credit of a proper fund at the time the warrant is presented to the County Treasurer for payment. The only statutory authority for registering county warrants is that given by Section 8800, C. L. 1921, which statute provides that,

> "When there are no funds to the credit of the *proper* fund in the treasury to pay the same, the same shall be registered in the order of their date."

Should any money be in the hands of the County Treasurer to the credit of the fund against which the legal warrant is drawn, the warrant should be paid and not registered by the Treasurer. However, when warrants have been properly registered, they are then payable in the order of presentment for payment. Section 8800, C. L. 1921.

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.
By HAZEL M. COSTELLO,
Assistant Attorney General.

184 MOTOR VEHICLES

To G. F. Snyder, March 9, 1932.

It is necessary for school bus drivers who are acting as common carriers—carrying not only pupils, but other individuals, in a locality, to and from picture shows, etc., to be licensed chauffeurs.

This is also true of those who haul rock, dirt, lumber, etc., for use on school premises. (Ch. 122, S. L. 1931.)

185 IRRIGATION

To C. C. Hezmalhalch, March 15, 1932.

A reservoir decree providing that a certain number of cubic feet of water shall be allowed to flow into a reservoir annually, means that the water is to be measured as it flows into the reservoir, and not at the river nor on a gauge-rod in the reservoir.

186 UNIVERSITY OF COLORADO

To John M. Jackson, March 15, 1932.

Payment of a water assessment of $37.50 on a tract of land on which the Board of Regents holds a trust deed as security for a loan, may not be paid out of the University Income Fund, but may be paid out of the University Permanent Fund, since it would be tantamount to an additional loan on the property secured by the trust deed.

187 ELECTIONS

To Ed Sumner, March 15, 1932.

An alien who has not received his first papers four months prior to a municipal election cannot vote thereat. He must be a citizen of the United States. (Secs. 7525, 7595, C. L. 1921.)

188 APPROPRIATIONS

To Governor Adams, March 17, 1932.

Concerning Contingent and Incidental Funds.

March 17, 1932.

Hon. William H. Adams,
Governor of Colorado,
Capitol Building,
Denver, Colorado.

Dear Governor:

Your letter of the 18th ult., supplementing your letter of the 13th requesting an opinion regarding the validity of the contingent and incidental funds of the offices of Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, and the Supreme Court contained in the General Appropriation Bill, Chapter 19, Session Laws of 1931, is herewith acknowledged.

A short history of the appropriations in question is necessary to a complete understanding of the funds involved in order to arrive at a legal conclusion. Section 32, Article V of the State Constitution, reads as follows:

> "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

Commencing with the first legislature in 1877, and ever since, in one form or another, there has been an incidental or contingent fund for the payment of the ordinary expenses of the executive and judicial departments contained in the General Appropriation Bills.

In 1877, the General Appropriation Bill contained a fund known as the "Incidental Expenses of the Executive and Judicial Departments," out of which was paid the expenses for the respective departments in question.

From 1879 to 1895, both inclusive, the General Appropriation Bills contained two funds, to-wit: (1) "General Contingent Expenses of the Executive and Judicial Departments," and (2) "Incidental Expenses of the Executive and Judicial Departments."

In 1897, the legislature combined the incidental and contingent appropriations of the several departments of the government into one fund, and for the first time the General Appropriation Bill (Sec. 3) provided that the contingent fund should be under the control of a State Auditing Board created by the act. Prior to 1897 payments from the general contingent fund for the executive and judicial departments were approved by the Governor and audited by the Auditor of State.

In 1899, the incidental and contingent expense funds again were combined and the State Auditing Board was called upon to audit the accounts. The present State Auditing Board was created by an act of the legislature, Chapter 78, Session Laws of 1911. Prior to this time the General Appropriation Bills contained a provision for an audit by the State Auditing Board, but apparently was considered affirmative legislation and had no place in the General Appropriation Bill.

As stated above, a contingent and incidental expense fund, in one form or another, had existed since the inception of statehood for the operation of the executive and judicial departments in question.

From the session of 1897 until the session of 1923, the General Appropriation Bill for each session contained one fund from

which the incidental and contingent expenses of the departments were paid.

The legislature of 1923 and each succeeding one created a separate contingent and incidental fund for each of the departments in question.

The validity of the contingent and incidental funds in question contained in the General Appropriation Bill of 1931 depends upon whether or not such funds were intended to be used for the "ordinary expenses" of the departments. The constitution contemplates that appropriations for the ordinary expenses of the various departments of the state shall be included in the General Appropriation Bill. It remains a question of fact as to whether or not any moneys expended from such funds are "ordinary expenses" of the government. The legislature has plenary and inherent power to make such appropriations.

This principle is clearly stated in Parks v. Soldiers' and Sailors' Home, 22 Colo. 26, at page 96, as follows:

> "Moreover, as the officers established by the constitution and those created by authorized legislative authority are usually required to keep offices, records, papers, etc., it is evident that expenses for these and like items may also be provided for as a part of the ordinary expenses of the legislative, executive and judicial departments of the government.
>
> "Our conclusions upon this branch of the argument may be summarized as follows: That as to those offices not expressly enumerated in the constitution, the legislature has plenary power to create or abolish the same, subject to well known constitutional restrictions. It may, subject to such restrictions, increase or diminish the salaries of the incumbents, but while the offices are in existence, and the officers are discharging their duties, appropriations made for their salaries or necessary expenses are entitled to take rank with the ordinary expenses of the state government."

It is true that in the case of Leckenby, et al. v. The Post Printing and Publishing Company, et al., 65 Colo. 443, at pages 445 and 448, it is stated as follows:

> "Any public officer demanding mileage, emoluments, fees, costs or expenses must point out some statute authorizing its allowance.
>
> * * * * * * * * *
>
> "A law must be enacted providing for its allowance before the compensation or expenses of state officials can be included in the general appropriation bill."

In our opinion, the case of Leckenby, et al. v. The Post Printing and Publishing Company, et al., supra, does not conflict with the case of Parks v. Soldiers' and Sailors' Home, supra, because if the reasoning announced in the Leckenby case were to be made literally applicable to the items covering incidental and contingent expenses of the various state departments in such manner as to declare them invalid, the functions of the state government would be entirely paralyzed, and the officers unable to perform their many constitutional and statutory duties.

In the Leckenby case, supra, the court had under consideration the office of lieutenant governor who had no particular duties to perform other than preside over the senate and act as governor in the latter's absence, and that the office did not require the keeping of records or papers and employment of clerks, etc.

It is our opinion that the language employed in the Leckenby case, supra, was intended to require *all* public or executive officers in question demanding any expense *other than the ordinary expense* to point out some statute authorizing its allowance, and that any such officer demanding expense *other than ordinary expense* must have a law enacted providing for its allowance before the compensation or expense of the officer can be included in the General Appropriation Bill.

In determining whether or not such funds are used to pay the ordinary expenses of the various departments, there arises the ultimate question as to whether or not the funds so expended are necessary for the proper conduct of the departments by the various executive officials. Since 1911 there has existed an Auditing Board and all expenditures from the incidental and contingent funds in question have been submitted to the Auditing Board for their approval. The statute requires that the vouchers must be itemized before being approved by the Auditing Board. Hence, if these conditions are satisfied then anyone asserting the invalidity of a particular item must assume the burden of proving that the items covered by vouchers and approved by the Auditing Board are not ordinary expenses necessary for the conduct of the department. Further, Chapter 52, Session Laws of 1931, provides that the said Auditing Board shall have control and direction over all appropriations made by the General Assembly for the several executive and judicial departments, etc. This act amends the act of 1911.

The question of the validity of the contingent and incidental fund of the Supreme Court rests upon the same grounds as the contingent and incidental funds of the other departments in question. The expenditure of any moneys from the fund must be based upon the necessity for the efficient conduct of the Supreme Court and the Judges thereof in the performance of their duties.

The same reasoning and test apply to the emergency and traveling funds of the departments in question. When an emergency

arises that requires an officer to perform a statutory duty which involves the expenditure of money, the emergency may likewise be considered an ordinary expense; provided, however, that the expense incurred is incident to the duty itself.

The contingent and incidental expenses of the executive departments in question have from the inception of statehood included necessary traveling, printing, express, freight, drayage, supplies, postage, stationery, telegraph, telephone and office equipment, etc.

It is, therefore, the opinion of this office that the appropriations contained in the Session Laws of 1931 for the contingent and incidental funds of the respective departments in question are valid for the purpose of defraying the ordinary expenses of the departments. See State ex rel. Davis v. Carter, 226 Pac. 691.

GOVERNOR'S CONTINGENT FUND FOR OFFICIAL AND SEMI-OFFICIAL PURPOSES.

The legislature in 1901 provided a contingent fund for the Governor, consisting of $2,500.00 for each of the fiscal years 1901 and 1902. The legislatures of 1903, 1905 and 1907 continued to create in the General Appropriation Bill the contingent fund for the Governor's office.

Commencing with the term of Governor John F. Shafroth in 1909, and continuing each session of the legislature thereafter until the session of 1925, the General Appropriation Bill contained a fund known and designated as the "Governor's Contingent Fund for official or semi-official purposes to be determined by him." (The legislature at the 1909 session likewise created the same kind of a fund for the Lieutenant Governor. The Speaker of the House of Representatives was also given an incidental expense fund of $500.00).

In 1925, during the administrattion of Governor Clarence J. Morley, the legislature struck out the words "to be determined by him" from the Governor's Contingent Fund for official or semi-official purposes, and since that time the fund has been designated in the General Appropriation Bills for the sessions of 1927, 1929 and 1931, as the "Governor's contingent fund for official or semi-official purposes."

It is the opinion of this office that the fund designated "Governor's Contingent Fund for official or semi-official purposes" is not of the same class as that of the contingent and incidental funds, and that the creation of the fund in the General Appropriation Bill, without express and specific constitutional or statutory authority, is prima facie affirmative legislation. See In Re House Bill No. 168, 21 Colo. 46.

The item of $4,000.00 contained in the foregoing fund, "to be used in this biennial, if needed, for exhibits at the World Fair and to celebrate the birth of George Washington," in our opin-

ion, is clearly invalid, for the reason that it is not an ordinary expense of your department, as contemplated by the constitution. Notwithstanding its economic and patriotic nature, it has no place in the General Appropriation Bill. As stated heretofore, the constitution provides that only ordinary expenses, etc., may be included in the General Appropriation Bill, and "all other appropriations shall be made by separate bills, each embracing but one subject."

The legislature has the power to appropriate money for such purposes by separate acts, and from time to time has made such appropriations. For example, at the same session of the legislature in 1931, an appropriation was made for the Spanish American War Veterans, Chapter 38, Session Laws of 1931, page 126.

It is unfortunate that this item was included in the General Appropriation Bill, but our reason for holding it invalid is clearly one of interpretation of the constitution.

For the first 33 years of statehood, your department was without a so-called official or semi-official fund, and why such a fund was created in 1909 remains somewhat of an inscrutable and legislative mystery. It may be that the salary at that time was considered inadequate and the demands of the office great, and that such a fund was intended to be used to pay extra-compensation or so-called semi-official demands of the office. If such a fund has been used in the past to pay extra-compensation to any officer whose salary is fixed by the constitution or by law, such payment tends to increase the emoluments, fees and salary of such officer and is in violation of the constitution. (Art. V, Sec. 30).

We have no means of knowing for what purpose the official or semi-official funds have been expended from time to time by the various Governors since 1909. The fund has never been audited by the Auditing Board. Its use has been left to the conscience of the Governor. During all of the times mentioned herein it has been within the power of the legislature to create by separate bill a fund for extraordinary expenses incurred by your office Notwithstanding the legislative precedent and administrative custom, it is subject to the limitation as herein expressed.

It is, therefore, our opinion that the burden is upon any Governor asserting the validity of this fund to show that the use of the fund is for the purpose of defraying the ordinary expenses of the office, and then only upon itemized vouchers to be approved by the Auditing Board, otherwise the use of the fund for any other purpose is invalid.

Respectfully yours,

CLARENCE L. IRELAND,
Attorney General.
By GEO. A. CROWDER,
Deputy Attorney General.

189 WORKMEN'S COMPENSATION

To Industrial Commission, March 21, 1932.

The State Compensation Insurance Fund was established for the benefit of the injured, and the dependents of killed employes, and therefore constitutes a trust fund for their benefit only. Only salaries of employes of the Fund, operating expenses and losses sustained under policies issued by the Fund can be paid therefrom. (Secs. 3605, 4496, 4499, 3459, C. L. 1921; Ch. 186, S. L. 1929.)

190 APPROPRIATIONS

To Dee H. Beer, March 26, 1932.

The purpose of Ch. 78, S. L. 1919, making appropriation for vocational education to comply with the Congressional Act, was to match dollar for dollar for the three specific purposes set out in the Congressional Act. Any excess in the State appropriation over the Federal allotment must be returned to the general fund, where it is available for the purpose of vocational education for the next fiscal year, since the appropriation is a continuing appropriation.

191 ELECTIONS

To Walter Guire, March 26, 1932.

Judges of election must meet on the Tuesday before a municipal election, and on the Tuesday before a general election.

If no newspaper is published in a town, compliance with Sec. 7588, C. L. 1921, is sufficient.

192 TAXATION

To D. H. Beer, March 29, 1932.

Real estate purchased by World War Veterans with money derived under Sec. 22, World War Veterans' Act of 1924, as amended Title 38, Sec. 454, N. S. C. A., is not exempt from taxation.

193 COUNTY FUNDS

To H. C. McKeown, March 30, 1932.

It is not legal to transfer money from a revenue bond interest fund to the ordinary County Fund. (Secs. 8865-8869, 8692-8694 and 8799, C. L. 1921.)

194 SCHOOL WARRANTS

To J. A. Phelps, April 5, 1932.

Concerning legal payment of school warrants.

April 5, 1932.

Hon. J. Arthur Phelps,
District Attorney,
Pueblo, Colorado.

Dear Sir:

Your letter of recent date, in which you ask our opinion concerning certain questions relating to the legality of the issuance, payment and registration of school warrants by school districts and the county treasurers, has been duly received.

In answer to your first question as to whether or not the payment of 1932 warrants for current expenses may be legally held up or registered and payment made of the warrants theretofore registered by the county treasurer, we may inform you that the 1932 warrants should be paid from the funds derived from the 1931 tax levies, for the reason that the levies were authorized and made for the certain purposes specified in the budgets of the various school districts and the money collected therefrom should be paid for the purposes specified in the budgets.

Your second question reads as follows: "Can the County Treasurer legally pay these registered warrants of previous years from the taxes from the 1931 levy?" To this we will say "No," for the reason stated above. We might add that in the event that certain taxes levied in 1930 for school district expenses of 1931, which taxes become delinquent in 1931, are paid in the year 1932, said money should be applied to the payment of 1931 warrants duly registered and unpaid, said warrants to be paid in the order of registration.

The third question which you have propounded is: "Can the County Treasurer legally pay warrants in excess of the tax levy for the current year?" Such payments would be a violation of Section 8301, C. L. 1921, which statute provides that the county treasurer shall pay over money upon the receipt of the legally drawn warrants of the district officers entitled to draw the same. Section 8302 provides as follows:

> "It shall not be lawful for the officers of any district to issue warrants at any time in any amount in excess of the tax levy for the current year."

Your fourth question reads as follows: "Assuming that he cannot, should the school district in its levy provide, as required by statute, for a special tax to take care of the unpaid registered warrants of previous years?" In this connection we may say that we find no statute which authorizes or provides for a levy of a

special tax to take care of the unpaid warrants of previous years issued by school districts. Such school warrants may be paid by funding the obligations of the district. Section 8356, Compiled Laws of 1921, provides for the issuance of bonds for funding floating debts, and unpaid warrants are floating debts as contemplated by said Section 8356. The bonded indebtedness is, of course, limited to 3½% of assessed valuation of the preceding year in the third class districts, and 5% in first and second class districts.

We wish to call your attention to Section 8799, C. L. 1921, which provides that county treasurers shall apportion and keep separately the several funds of each school district. We are of the opinion that a great deal of the confusion which has arisen will be avoided if the country treasurers should keep the accounts separately as provided by said statute. Should any further information be desired, we shall be glad to assist you.

Yours very truly,
CLARENCE L. IRELAND,
Attorney General.
By HAZEL M. COSTELLO,
Assistant Attorney General.

195 GASOLINE AND OIL

To James Duce, April 6, 1932.

Chapter 126, S. L. 1931, nowhere provides for the sale or *use* of tax exempt motor fuel. The legislature undoubtedly intended that the tax must be collected on all motor fuel in order that the state might have a record of all such fuel produced in or imported into the state. Therefore any person who imports gasoline into this state, for any purpose whatever must make a sworn report of the same to the office of the State Inspector of Oils and pay the tax of 4 cents per gallon.

196 SCHOOLS

To Mrs. Ira Wombles, April 9, 1932.

The current year referred to in Sec. 8302, C. L. 1921, is the calendar year.

197 INDUSTRIAL COMMISSION

To Industrial Commission, April 11, 1932.

In cases of emergency, the Industrial Commission may permit or order the State Compensation Fund to pay from its operating fund to the State Coal Mine Inspection Fund, as consideration for inspecting mines upon which the State Compensation Fund carries insurance, an amount not to exceed the estimated salary and expenses if it provided its own inspector for the inspection of the mines under consideration—these payments only to be permitted until the legislature shall have reasonable time to consider such measure and make necessary provision therefor.

198 TAXATION

To Colorado Tax Commission, April 11, 1932.

Livestock driven from one county into another for the purpose of grazing must be assessed for taxation in the county where located on April 1st of the current year. The tax, when collected, must be prorated with other counties in which the livestock grazed.

April 11, 1932.

Colorado Tax Commission,
State Office Building,
Denver, Colorado.
Attention Mr. J. R. Seaman:

Gentlemen:

Answering your request for an opinion regarding the assessment of live stock for taxation in which request you state:

> "We are having more or less controversy over the assessment of live stock which is grazed for a portion of the year in more than one county. In some counties the Assessor is assessing the owner of the live stock which happens to be in his county on April 1st, of each year. This live stock is then driven into summer range counties for a portion of the year, and the Assessors in those counties are also levying an assessment upon the live stock which was assessed in the adjoining county as of April 1st.
>
> "*Question*—In which county should the live stock be legally assessed? Can this same live stock be assessed in both counties for the current year?"

Section 7461, C. L. 1921, is directory as to the manner in which live stock is to be assessed, but the first sentence of this section should be ignored for the reason that the Supreme Court, in Carbon County, etc., v. Routt Co., 60 Colo. 224, and in Hutchinson v. Herrick, 70 Colo. 534, has declared it unconstitutional. Since the first sentence of Section 7461 down to the word "Provided" is unconstitutional and the proviso clause refers back to this sentence the proviso clause to be clear should be read as follows:

> "That (when) cattle, sheep or horses that range or are kept or herded in one county a part of the year and range or are kept or herded in another county the remaining part of said year they shall be assessed and taxed in either of said counties, and such taxes shall be divided between said counties in proportion to that part of the year said stock remained in each county;" * * *

It is obviously this first part of the section that is misleading assessors of counties into which live stock is driven for grazing to make an assessment in addition to one made by the Assessor of the county where the owner of the live stock resides and from where

they come. This practice constitutes double taxation and should not be permitted (see Hutchinson case above).

To answer your question in the second paragraph of your letter directly, it is our opinion that live stock must be assessed in the county where located on April 1, and *may not* be assessed in both counties for the current year.

The proper method, in our opinion, in which live stock should be assessed is to assess it in the county in which it is located on April 1 of the current year and when collection is made to prorate the tax with the other county in which the live stock grazed in accordance with the time located in the respective counties. To permit, for example, 1,000 head of sheep to be assessed, 500 in one county and 500 in another, assuming that they are all in one county on April 1, is incorrect and unlawful, for to do so is to permit assessment of live stock in a county in which it was not situated on April 1. Section 7249, C. L. 1921, provides that all personal property within this state shall be assessed in the county where located on April 1.

You state that in cases where one assessor has made the assessment and the whole tax has been collected the Treasurer has been reluctant to prorate with the other county. This situation is a matter between the respective Treasurers for which the taxpayer should not be burdened by being twice assessed. You will note that Section 7461 provides:

> "* * * and immediately after December 31st of said year it shall be the duty of the Treasurer of the county that has collected the taxes for that year on said stock to *forward without order* from any person or board whatever to the other county treasurer, such portion of said taxes as appears from said verified statements to be due to said other county." * * *

It is our opinion that the owners of live stock can aid himself by giving the "verified statement" to the assessors of each county, showing the removal of stock from one county to another, that is required by Section 7461, C. L. 1921.

In the case of Mr. Fahnestock whose live stock was assessed in Mineral County on April 1, and subsequently driven into Saguache County for grazing and the Assessor of Saguache County again assessing the live stock after April 1, it is our opinion that the assessor of Saguache County has absolutely no right to so assess the live stock and should be notified to desist. The Treasurer of Saguache County must look to the Treasurer of Mineral County for the proper proportion of the tax collected, and accept the taxes due on the real estate in Saguache County less the personal tax. Mr. Fahnestock should not be thus penalized for any differences which might exist between the Treasurers over the division of the tax paid by him and collected in Mineral County.

The two former opinions of this office referred to in your letter are in harmony with this opinion. See also Opinion No. 112, page 109, 1929-30 Biennial Report.

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.

By EDWARD J. PLUNKETT,
Assistant Attorney General.

199 OPTOMETRY

To J. C. Bloom, April 12, 1932.

The Optometric Board would have authority under Sec. 16, Ch. 140, S. L. 1925, to refuse to renew, or to suspend or revoke the license of any person found guilty of practices which Sec. 21 of the Act makes unlawful.

200 SCHOOLS

To E. J. Knight, April 13, 1932.

The county treasurer in a third class county may withhold 1% of the school tax collected by him; and shall pay into the county treasury any surplus above $2500.00.

201 DENTAL BOARD FUNDS

To Dental Examiners, April 14, 1932.

Sec. 4578, C. L. 1921, applies only in case of the repeal of the dental act, and the permanent dissolution of the board.

202 JUDGMENT BOND SUIT

To State Land Board, April 23, 1932.

The State of Colorado, not being a party to this suit, should not become involved therein unless, and until the interests of the state are directly affected. The State cannot be deprived of any of its legal rights by reason of its failure to intervene at this time.

203 CORPORATIONS

To Charles M. Armstrong, April 26, 1932.

The renewal of the corporate life of a company must be accomplished under Sec. 17 of Ch. 70, S. L. 1931, and the fee payable is that prescribed in said Sec. 17.

204 CORPORATIONS

To Charles M. Armstrong, April 26, 1932.

Under Sec. 2303, C. L. 1921, a "non-profit corporation" may not be charged a fee for filing amendments to its Articles of Incorporation.

205 SCHOOLS

To R. G. Sollenbarger, April 27, 1932.

Sec. 7, Art. IX, Colo. Const., prohibits any school district from paying public moneys for sectarian purposes, or to help support any school controlled by any church.

206 WASHINGTON BICENTENNIAL COMMISSION

To State Auditing Board, April 27, 1932.

Under Ch. 149, S. L. 1929, amended by Ch. 139, S. L. 1931, if there are sufficient funds accruing to the State Board of Immigration from the Real Estate Brokers Fund, such funds may be used to pay the expenses of the members of the Washington Bicentennial Commission, under the direction of the State Auditing Board.

207 WARRANTS—DISTRAINT

To C. S. Ickes, April 28, 1932.

Under Sec. 8758, C. L. 1921, and Sec. 7481, C. L. 1921, the sheriff is the proper person to serve distraint warrants.

208 CITIZENSHIP

To Emery Darby, April 29, 1932.

A woman who was a citizen of the United States and who married a foreigner prior to Sept. 22, 1922, has lost her citizenship and may not vote.

The Act of Sept. 22, 1922 did not change her status but gave her the right to become naturalized.

The rule would be different if she married after Sept. 22, 1922.

See also opinion to R. T. Cline, April 29, 1932.

209 FRAUDULENT PRACTICE ACT

To Chas. M. Armstrong April 30, 1932.

Salaried employes of dealers, who sell or buy securities, must be registered under Ch. 95, S. L. 1931.

210 APPROPRIATIONS

To Governor Adams, May 2, 1932.

Whether money spent on exhibits at the Washington Bicentennial, constitutes an ordinary expense of government, is a question of fact to be determined by the Governor, subject to the approval of the Auditing Board.

211 SCHOOLS

To Colorado Tax Commission, May 3, 1932.

Concerning school levies.

May 3, 1932.

Attention Mr. E. B. Morgan:
Colorado Tax Commission,
State Office Building,
Denver, Colorado.

Gentlemen:

In answer to your letter of April 14, 1932, requesting an opinion from this office concerning school levies in districts of the third class, we wish to inform you as follows:

We are in accord with the position taken by your Commission as to the necessity for the electors of third class districts to vote a budget in order to make the school tax upon such district legal. Section 8381, C. L. 1921, provides that the qualified electors of districts of the third class, when assembled at any regular or special meeting, shall have power to order such tax on all the taxable property of the district as the meeting shall deem sufficient. The authority for holding said regular meeting is given in Section 8327, C. L. 1921, and for holding said special meeting is given in Section 8380, C. L. 1921. The Supreme Court of Colorado in interpreting said statute said:

> "According to well established rules of statutory construction, in districts of the third class, the power being vested in the electors, is to the exclusion of the board of directors, and the power could not be assumed without an affirmative provision authorizing it; none such is found."
>
> Co. Comm. v. R. R. Co., 3 C. A. 398.

The court in said case held that the power to assess a special tax in school districts of the third class, being conferred only upon the electors, the assumption of the power by the directors was unwarranted and the levy invalid.

With reference to the second question stated in the letter of the County Superintendent of Schools to you, dated April 11, 1932, we wish to state that such question should be answered in the negative. Section 7214, C. L. 1921, amended by Chapter 153, S. L. 1929, prohibits every school district including third class districts from levying a tax which will produce a greater amount of revenue for any year than was levied the preceding year plus 5% (except to provide for the payment of bonds and interest thereon), unless such increase is approved by the State Tax Commission as required by Section 7216, C. L. 1921.

Referring to the third question stated in said letter of the County Superintendent, which question is as follows:

"Would the Tax Commission hold under the same advisement, that a levy decreased without consent of the electors of a third class district, decreased without consultation with their legal representatives, the members of the school board and in direct violation of a budget legally voted upon and on file in the county superintendent's office, would the Tax Commission hold such a levy to be legal?"

In this connection we wish to state that a levy voted upon by the qualified electors of a third class district at a meeting legally called, said tax being approved by the Board of Directors may not be decreased by the Board of County Commissioners.

Section 8287, C. L. 1921, reads as follows:

"It shall not be lawful for a district or district board to reconsider the question of the levy of a special tax after the same has been certified to the county commissioners, nor shall said commissioners be charged with any discretion in the matter of such levy further than to ascertain if the law has been obeyed."

It will, therefore, be seen that the County Commissioners have no power to refuse to make a levy sufficiently adequate to produce the amount of money which in the judgment of the district is necessary for the current year, provided the levy is a legal one.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.
By HAZEL M. COSTELLO,
Assistant Attorney General.

212 FARM LOANS

To State Land Board, May 4, 1932.

All abstracts submitted to the Attorney General for examination on behalf of the State Land Board should be accompanied by an opinion of a licensed practicing attorney, showing that he has made an office and record examination of the title since the last certification contained in the abstract and the abstract must show fee simple title in the applicant.

213 MOTOR VEHICLES

To Chas. M. Armstrong, May 4, 1932.

Sec. 143 of Ch. 122, S. L. 1931, supersedes Sec. 18, of the same Act.

214 BUILDING AND LOAN

To John M. Meikle, May 4, 1932.

Since the Building and Loan Statute does not expressly say that it provides the only method under which such associations or companies may organize and act, building and loan associations must in certain respects comply with the general corporation law, the Securities Act of 1923 and the Fraudulent Practice Act of 1931. (Ch. 58, S. L. 1931; Ch. 95, S. L. 1931; Ch. 168, S. L. 1923; Ch. 38, C. L. 1921.)

215 FRAUDULENT PRACTICE ACT

To C. M. Armstrong, May 6, 1932.

Investment Trusts are amenable to the provisions of Ch. 95, S. L. 1931.

216 PROBATE FEES

To Thomas Evans, May 7, 1932.

Under Ch. 79, S. L. 1931, amending Ch. 80, S. L. 1929, the original fee paid when the first papers are filed, is to be credited on the so-called "additional fees."

217 SCHOOLS

To E. E. Kissinger, May 9, 1932.

Concerning outstanding school warrants.

May 9, 1932.

Mr. E. E. Kissinger,
County Treasurer,
Canon City, Colorado.

Dear Mr. Kissinger:

Replying to your letter of the 29th ult., requesting an opinion from this office as to whether or not current revenues may be used to pay registered warrants of previous years, and in the event that cannot be done, how such warrants may be paid, we are enclosing a copy of the opinion rendered by this office to Mr. Phelps, District Attorney at Pueblo, which, I believe, answers your question.

You will note that on page 2 of the opinion we state that there is no statute providing for the levy of a tax to take up unpaid warrants of previous years in the case of school districts. In the case of counties there is a statutory provision for a levy to take up unpaid warrants of a county (C. L. 1921, Sec. 8665).

As stated in the Phelps opinion, there is a statute providing for a bond issue in school districts to take up floating debts of the district. The question arises whether a school district could not make a levy for the specific purpose of taking up outstanding warrants of previous years, if it would be to the best interests of the district to do so, without a bond issue. However, upon this

question we can find no decision of our Supreme Court, nor of any other court of final resort, dealing with this question, and we would hesitate to say, in the absence of such a decision, that it would be proper to do so, since school districts are creatures of the statutes and have only such powers as they are clothed with by the statute.

We believe, however, that this question would not be raised as a direct matter if school districts as a whole would make a sufficient levy for current revenues to take care of reasonable demands and provide for a reasonable surplus to make up for taxes which are not paid into the county treasury ultimately or within a reasonable time.

In most school districts where there are outstanding warrants of previous years, for which there are no funds in the county treasury to pay, it will be noted that such indebtedness is incurred by the school district, in the particular case, drawing warrants in excess of the reasonable amount to be expected from taxpayers.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

218 SCHOOL AND COUNTY WARRANTS

To Mrs. E. E. Bennet, May 10, 1932.

There is no statute of this state permitting school districts to make a specific levy for the purpose of redeeming outstanding registered warrants of previous years, but there is a statute which permits school districts to vote a bond issue for such purpose.

In the case of county warrants there is a statute permitting the board of county commissioners to make a levy for the purpose of paying outstanding warrants and other floating indebtedness, so long as it does not exceed 3 mills on the dollar.

219 REFUNDING BONDS

To State Land Board, May 10, 1932.

The City of Aspen's refunding bonds, dated July 1, 1931, are invalid for the reason that at the time of their issuance the interest upon the refunding bond issue dated January 1, 1925, had not been paid. (Sec. 9189, C. L. 1921.)

220 STATE SCHOOL FUND

To Hon. John M. Jackson, May 11, 1932.

The State Treasurer as custodian of the State School Fund is authorized to do nothing with said fund except at the direction of the State Board of Land Commissioners, and when he acts under its direction he has no responsibility other than that of the safekeeping of said fund while it is in his hands. (Sec. 3, Art. IX, Colo. Const.; Sec. 335, C. L. 1921; Ch. 169, S. L. 1923.)

221 BUILDING AND LOAN

To Eli M. Gross, May 13, 1932.

A building and loan company may not issue an "Insured Savings Certificate," in connection with a "Renewable, Non-Convertible Decreasing Term Insurance Policy," where the certificate provides for a withdrawal greater than 2%. (Sec. 2529, C. L. 1921.)

222 PROBATE FEES

To J. E. Sanchez, May 16, 1932.

In fourth class counties probate fees are governed by the provisions of Ch. 79, S. L. 1931, and in an estate where the inventory is more than $1,000 and not more than $5,000, an inventory fee of $15 should be collected which is later offset by the first $15 of the additional fee collected.

223 DAIRY LAW

To Walter Freeman, May 16, 1932.

Under the police power which the legislature has vested in cities and towns, municipal corporations have complete authority to regulate in any reasonable way, the production and sale of milk for consumption within the city or town, except that no license fee may be charged against farmers so producing and selling milk. (Citing Sec. 9003, C. L. 1921; People v. Leddy, 53 Colo. 109.)

224 INSURANCE

To Jackson Cochrane, May 18, 1932.

A retaliatory tax against a California insurance company should be collected in compliance with the California law. (Citing Pacific Mutual Life Insurance Company v. Washington, 296 Pac. 813.)

225 MARRIAGE

To C. H. McKay, May 19, 1932.

First cousins may marry. (Secs. 5548, 6838, C. L. 1921.)

226 GAME AND FISH

To R. G. Parvin, May 19, 1932.

Sec. 1426, C. L. 1921, as amended by Ch. 100, S. L. 1925, repeals Secs. 1574 and 1575 of said Compiled Laws, in so far as the latter apply to game wardens, and no deputy game warden under civil service has the right to demand or receive any other compensation than the salary and expenses provided for by said Sec. 1426 as amended.

227 ELECTIONS

To S. M. Konkel, June 2, 1932.

"It has been held in a number of cases that a promise by a candidate, made to the electors generally to serve, if elected, for less than the fees or salary prescribed by law, constitutes bribery." (9 R. C. L., Sec. 128; L. R. A. 1917B, page 199.)

228 INSURANCE

To Jackson Cochrane, June 2, 1932.

Under Sec. 2491, C. L. 1921, a non-resident seeking a broker's license in this state must pay a fee of $10.00.

229 MARKET DIRECTOR

To J. J. Tobin, June 2, 1932.

It is not necessary that the inspectors of the State Market Department be deputized as deputy sheriffs to give them authority to stop and inspect trucks carrying vegetables to market. The authority to enforce fruit and vegetable inspection is placed entirely upon the Market Director. (Ch. 96, S. L. 1931.)

230 APPROPRIATIONS

To State Auditing Board, June 4, 1932.

The unexpended portion of an appropriation made for one purpose, cannot lawfully be transferred to a fund for another purpose.

231 CORPORATIONS

To Chas. M. Armstrong, June 6, 1932.

When two companies consolidate, it amounts to the formation of a new company, and the fee to be charged for filing papers, is the regular fee for filing articles of incorporation.

232 CIVIL SERVICE

To James Dalrymple, June 6, 1932.

Regularly certified employes in the classified Civil Service of the state cannot be compelled to take a vacation without pay, but they may consent thereto. (Art. 12, Sec. 13, Colo. Const.)

The annual report of the Chief Inspector of Coal Mines may be in long-hand or typewritten. (Ch. 134, S. L. 1925.)

It is not compulsory upon the Board of Examiners to hold a biennial examination for mine officials and State Coal Mine Inspectors. (Ch. 134, S. L. 1925.)

233 AUTO CAMPS

To Chas. M. Armstrong, June 7, 1932.

One who leases an auto camp must procure a license for operating the same, whether it is leased from a town, municipality, corporation or private person. (Ch. 132, S. L. 1929.)

234 ATTORNEY AT LAW

To W. M. Ramsdale, June 9, 1932.

Before an attorney from another state may transact any business in the courts of this state, he must file a motion with the court, asking for its permission; and he should not attempt to handle the matter of business by correspondence. (Sec. 6018, C. L. 1921.)

The fees for probating foreign wills are the same as for other wills. (Ch. 79, S. L. 1931.)

235 MOTOR VEHICLES

To W. D. MacGinnis, June 20, 1932.

Concerning the payment of the expense of motor vehicle registrations and license plates. (Ch. 122, S. L. 1931.)

236 FEDERAL TAX OF 1932

To John M. Jackson, June 23, 1932.

Under Art. 36 of Regulations 42 (Commissioner of Internal Revenue) the federal tax does not attach to checks or warrants issued by the State Treasury.

237 INSURANCE

To Jackson Cochrane, June 28, 1932.

Under Sec. 2501, C. L. 1921, insurance companies become incorporated under Ch. 19 of the General Statutes of 1883, and the term of their corporate existence, except life insurance companies, is twenty years.

238 AUDITING BOARD

To Dr. Coolbaugh, June 29, 1932.

Sec. 1 of Ch. 53, S. L. 1931, gives the Auditing Board general control over the appropriations of state boards and institutions, so they cannot exceed their appropriations, but it does not burden the Auditing Board with the detail expenditures of state institutions.

239 MENTAL DEFECTIVES

To Dr. Cyrus L. Pershing, July 9, 1932.

There is no statute of the State of Colorado which will permit sterilization of an inmate confined in any state institution.

240 NURSE EXAMINERS BOARD

To Irene Murchison, July 9, 1932.

The "Reciprocity Clause" of our statute applies only to those nurses who are bona fide nurses of other states having reciprocity agreements with the State of Colorado and who have in a regular course of training and preparation for nursing, taken an examination in such other state and later removed to this state. It is not intended to permit persons who have failed on examination in this state, to take an examination in another state and, having passed, be permitted to practice nursing in this state.

241 CIVIL SERVICE COMMISSION

To State Auditing Board, July 13, 1932.

Under Sec. 134, Compiled Laws of Colo. 1921, it is the duty of the Civil Service Commission to make investigations and subpoena witnesses, and the expenses and fees of such witnesses constitute an expense of the Commission. If there is no special appropriation out of which the same can be rightfully paid, the bill for such fees and expenses should be approved by the Commission and sent to the Auditing Board to be paid out of the general fund of the state, as expenses of executive officers of the state are paid. (Art. XII, Sec. 13, Colo. Const.)

242 MOTOR VEHICLES

To Chas. M. Armstrong, June 13, 1932.

It would be a violent assumption for enforcement officers to assume that because a person does not have immediate possession of his license, he has no license. It would be just and sensible to permit such person a reasonable time to show cause for failure to have "immediate possession"—such as loss, theft or forgetfulness. (Ch. 122, S. L. 1931.)

243 FRAUDULENT PRACTICE ACT

To Chas. M. Armstrong, June 14, 1932.

The filing fee provided for by Sec. 14 of Ch. 95, S. L. 1931, is unquestionably meant to be used for the necessary expenses incurred in the administration of the act, and should be deposited in a special fund with the State Treasurer for that purpose.

All fees collected under the act, except the filing fee should go into the general fund, as provided in Ch. 103, S. L. 1927.

Additional employes may be employed if necessary, but the salary of present employes may not be increased or supplemented from the special fund.

244 COUNTY CLERK AND RECORDER

To U. S. Dept. of Agriculture, July 14, 1932.

Under Sec. 7898, C. L. 1921, the county clerk and recorder is required to collect all fees in advance, and if he fails to do so the amount shall be charged against his salary. He is also required to make a monthly report of the fees of his office under oath to the county commissioners, who shall audit his account.

The Attorney General would have no right to advise the county clerks that they must file or record crop mortgages in advance of payment.

245 LEGAL NEWSPAPER

To Edwin A. Bemis, July 14, 1932.

A weekly newspaper, in order to be a legal newspaper must have been published continuously and uninterruptedly during a period of at least 52 consecutive weeks next prior to the first issue thereof containing a legal notice. (Ch. 113, S. L. 1931.)

246 LIABILITY OF STATE INSTITUTIONS

To Dr. F. H. Zimmerman, July 15, 1932.

"Without constitutional or legislative authority the state in its sovereign capacity cannot be sued. No such authority exists in this state. This being so, no liability upon contract or tort, if any there be, can be enforced against the state in any of its courts." (In Re Constitutionality, etc., 21 Colo. 69.)

247 IRRIGATION

To M. C. Hinderlider, July 15, 1932.

Water not available, and not in existence at the time of the establishment of a priority by decree, is not subject to such decree. (Citing Sec. 1637, C. L. 1921; Ironstone Ditch Co. v. Ashenfelter, 57 Colo. 31.)

248 FRAUDULENT PRACTICE ACT

To Chas. M. Armstrong, July 18, 1932.

One who sells his mineral interest in land and gives a mineral deed therefor, is not required to obtain a dealer's license under Ch. 95, S. L. 1931.

249 TAXATION

To James D. Parriott, July 21, 1932.

Leased property is taxable to the lessor and not to the lessee, except where the lease is in perpetuity or for a long term and renewable forever, or where the lease is for life, or, it has been held, where no rent is reserved.

July 21, 1932.

Hon. James D. Parriott,
City Attorney,
Municipal Building,
Denver, Colorado.

Dear Mr. Parriott:

Referring to your letter of June 17, requesting an opinion from this office on the taxable status of the University Building, Denver, and to the copy of Mr. Hays' opinion thereto attached and supplementing letter from this office addressed to you on June 24, you are advised that, after careful consideration of this matter, this office is of the opinion that the University Building should be assessed to the record owner of the land on which the building is located. This opinion is based upon the following view of the matter.

As we understand the situation from Mr. Hays' brief or letter of May 19, written to Mr. McGlone, Manager of Revenue, the title to the real estate upon which the building stands is in the name of Myles Taylor Watts, Trustee, et al.; that this real estate was leased to Alexis C. Foster for a period of ninety-nine years from September 30, 1909, upon the condition that the lessee was to erect a building thereon not less than six stories high; that the building was erected and that thereafter by various conveyances the lease was finally assigned on June 1, 1923, by the Retail District Investment Company to the Colorado Seminary, which may or may not be a corporation entitled to exemption from all taxes.

Cooley on Taxation, Volume 2, 4th Edition, Paragraph 593, makes the following statement:

> "Two questions arise in connection with the taxation of lessees. First, is the property leased to be taxed to the lessor or the lessee. * * * As to the first question it is well settled that, unless it is otherwise provided by statute, the leased property is taxable to the lessor and not to the lessee, except where the lease is in perpetuity or for a long term *and* renewable forever, or where the lease is for life, or, it has been held, where no rent is reserved. * * *" (Emphasis ours.)

As we understand the matter, the lease in question does not meet the conditions above set out. It is not in perpetuity. Although it is for a long term it is not "for a long term and renewable forever." It is not for life. And as we understand the matter ground rent is reserved.

But aside from all this, Section 7195, C. L. 1921, reads in part:

> "* * * *Provided,* That where any property within this state is mortgaged, conveyed or pledged for the security of a loan or debt then owing, the said property and

the notes, mortgage, deed of trust, trust deed, contract or other conveyance, *shall be assessed as a unit*, and as one and the same, and as of one value and as the value of said property so mortgaged, pledged or otherwise conveyed only, and any such notes, mortgages, deeds of trust, trust deeds, contract or conveyance, shall not be otherwise returned or assessed. (L. '02, p. 46, Sec. 14; R. S. '08, Sec. 5542.)'' (Emphasis ours.)

From all the foregoing, we take it that the property should be assessed to the record holder of the legal title and that he should be left to make whatever showing he may that he is not taxable thereon. We do not believe that the question of whether or not the Colorado Seminary has been relieved from any and all taxes in this State needs to be considered in this connection.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.
By GEORGE T. EVANS,
Assistant Attorney General.

250 COSMETOLOGISTS

To Cosmetologists Board, July 28, 1932.

Under Sec. 16, Ch. 74, S. L. 1931, one who at the time of the passage of the Act was in the actual and continuous practice of cosmetology, is entitled to a license to practice in this State upon payment of the proper fee.

251 SCHOOLS

To R. R. Tarbell, July 26, 1932.

Qualified electors of a school district who have paid a school tax in the year next preceding the election may vote upon the question of the issuance of bonds.

A qualified elector is one who is a citizen of the United States, has resided in the state one year, in the county 90 days, in the city or town 30 days and in the ward or precinct 10 days. (Secs. 7525, 8356, C. L. 1921.)

252 SCHOOLS

To Malcolm Erickson, July 28, 1932.

The school district fiscal year has not been defined by the Legislature, but it should be considered to be identical with the calendar year or the county fiscal year. (Ch. 154, S. L. 1925; Ch. 214, S. L. 1921; Secs. 8286, 8302, 8333, 8692, C. L. 1921.)

253 SCHOOLS

To Minnie O. Davis, July 30, 1932.

Sec. 7216, C. L. 1921, which authorizes an excess levy in the event that the tax levied by said act is insufficient for the needs of the district for the current year, does not authorize the levy of a tax to retire outstanding registered warrants of previous years. (Sec. 8302, C. L. 1921; Beher v. Wilson, 59 Colo. 96.)

254 RECONSTRUCTION FINANCE CORPORATION

To Governor Adams, July 30, 1932.

Analysis of the Reconstruction Finance Corporation act, as concerns state loans, and its application to the State of Colorado.

255 ELECTIONS

To Bessie B. Guthrie, August 2, 1932.

Unless fraud is apparent on face of primary nomination petitions for committeemen and committeewomen, such petitions should be accepted by the County Clerk.

Arrangement of names on ballot should be decided by lot by county clerk in the event two persons have an equal number of votes for the same county or precinct office. (Secs. 7576, 7758, C. L. 1921.)

256 MOFFAT TUNNEL COMMISSIONERS

To Chas. M. Armstrong, August 3, 1932.

Ch. 116, S. L. 1931, does not provide a complete manner in which Moffat Tunnel Commissioners may be nominated.

257 SCHOOLS

To C. C. Krauth, August 3, 1932.

Ownership of an interest in certain taxable property in a school district, does not qualify such person to vote upon the question of a bond issue. (Sec. 8356, C. L. 1921.)

258 ELECTIONS

To C. M. Wilson, August 4, 1932.

Electors in cities and towns, not county seats, having a population of between 2000 and 5000, do not have the right of additional registration in the county clerk's office that is provided for electors under Sec. 1, S. L. 1931, Ch. 92, in cities and towns between 2000 and 5000 population which are county seats? (Sec. 7612, C. L. 1921.)

259 COUNTY EMERGENCY WARRANTS

To J. A. Carruthers, August 9, 1932.

Should county commissioners in the sound exercise of their discretion believe that a real emergency exists and that addition-

al funds over the amount provided in the annual appropriation resolution are absolutely necessary to care for such emergency, an additional tax levy (within limits) may be made. (Secs. 8693, 8853, C. L. 1921; Arapahoe County v. U. P. R. R. Co., 63 Colo. 143.)

260 SCHOOLS

To Wm. H. Long, August 9, 1932.

If an elector pays a tax during the calendar year or during the 12 month period preceding a bond election, he is qualified to vote thereat.

261 ELECTIONS

To Elizabeth Hasser, August 10, 1932.

In precincts outside of cities having a population of 2,000 or more the first precinct registration day is on Tuesday one week preceding the primary election and that is the last day on which a voter may change his party affiliation. To do so, the voter must appear before the registration board in person and make a signed statement of his election to change his affiliation.

The first time a voter may change his party affiliation in such precincts is not less than ten days before such first registration day, by transmitting his written request to any member of the registration committee in his precinct. (Ch. 91, S. L. 1931, pages 333 and 334.)

262 INSURANCE

To Jackson Cochrane, August 12, 1932.

A reinsuring company must pay the tax provided for by Sec. 2486, C. L. 1921.

263 INSANE PATIENTS

To Dr. F. H. Zimmerman, August 15, 1932.

After the lapse of 2 years from the time a patient is given a probation discharge, or from the time he escapes from the hospital and has not been returned thereto, his legal status is that of a sane person so far as the hospital is concerned. (Ch. 132, S. L. 1925.)

264 ELECTIONS

To Chas. M. Armstrong, Aug. 23, 1932.

Under sub-section b of Sec. 7662, C. L. 1921, a candidate for office in the primary election may act as a watcher or challenger. (Sec. 7754, C. L. 1921.)

265 FEDERAL TAX

To W. S. McNary, Aug. 24, 1932.

Long distance telephone calls made by the University of Colorado School of Medicine are not subject to Federal tax.

266 BUILDING AND LOAN

To Hon. Wm. R. Eaton, Aug. 26, 1932.

The Colorado Building and Loan Act is sufficiently broad and comprehensive to permit the associations organized under our State Laws to meet the requirements of the Federal Home Loan Bank Act in becoming members of that Bank by the purchase of stock for the purpose of securing funds by loans to meet the needs of such associations. (Sec. 2794, C. L. 1921.)

267 LAW ENFORCEMENT DEPARTMENT

To Lewis N. Scherf, Aug. 26, 1932.

Under Ch. 122, S. L. 1931, the Secretary of State has the sole power to establish the standards of reflector type tail lights and reflector type clearance lights. The law enforcement officers may not order the removal of a light the standard of which has been fixed by the Secretary of State, but if some particular light in such standard becomes defective, the law enforcement officers may order its removal.

268 COUNTY SHERIFF

To S. E. Dunivan, Aug. 26, 1932.

County commissioners are not obliged to make an appointment to fill a vacancy in the office of sheriff, if the unexpired term does not exceed one year. (Secs. 7921, 7927, 8716, 8750, 8751, C. L. 1921.)

269 PUBLIC RECORDS

To Chas. M. Armstrong, Aug. 27, 1932.

Upon the expiration of the 15 day protest period, initiative petitions may not be inspected unless a necessity for such inspection is shown to exist. (Secs. 30, 31, C. L. 1921; Vol. 52, C. J., Sec. 40.)

270 LAW ENFORCEMENT DEPARTMENT

To Lewis N. Scherf, Aug. 30, 1932.

The Law Enforcement Department was created to aid in the enforcement of the Prohibition Act, and is not charged with the enforcement of the motor vehicle laws. (Sec. 2723, C. L. 1921.)

271 OPTOMETRY

To J. C. Bloom, Aug. 30, 1931.

A jeweler who advertises spectacles for sale, but who calls in a licensed optometrist to make the examination, is not required to obtain an Itinerant Practitioner's license. (Sec. 12, Ch. 140, S. L. 1925.)

272 TAX SALE CERTIFICATES

To L. N. Blair, Sept. 1, 1932.

A tax sale, regular in all respects, obliterates a title acquired under a previous sale. (Morris v. Grauberger, 59 Colo. 164.)

A valid tax sale cuts off prior liens for special assessments made by city. (Henrylyn Irrigation District v. Patterson, 65 Colo. 385.)

273 BUILDING AND LOAN

To Messrs. DeLong, Jackson and Bowman, Sept. 3, 1932.

The Building and Loan Commissioner must make an annual report to the Governor of the general condition of all associations, but he is not required to make a detailed report unless requested to do so by the Governor. (Secs. 2814, 141-146, inclusive, C. L. 1921.)

274 VACANCY IN U. S. SENATE

To Governor Adams, Sept. 6, 1932.

Under Sec. 7817, C. L. 1921, when a vacancy happens in the office of U. S. senator, the Governor shall make a temporary appointment to fill the vacancy until the next ensuing election. Then under Sec. 7818, C. L. 1921, the Governor should issue a writ of election to the Secretary of State, directing him to include in his general election notice for the next general election, a notice of the filling of such vacancy. (Art. XVII, Sec. 2, Colo. Const.)

275 SCHOOLS

To F. A. Ogle, Sept. 10, 1932.

School districts in Colorado may insure their properties in mutual companies.

September 10, 1932.

Mr. F. A. Ogle,
County Superintendent of Schools,
Greeley, Colorado.

Dear Sir:

Your letter of August 20, 1932, contains the following request for an opinion from this office:

> "A great many times during the last few years, we have been asked by members of school boards whether it is legal to insure school buildings in Mutual Insurance Companies. I should like very much for you to give me an opinion concerning the legality of such insurance."

A copy of an opinion under date of April 19, 1929, written by A. L. Beardsley, former Assistant Attorney General, was sent to you on August 23, 1932. However, since that time we have given further consideration to the subject of your inquiry and wish to advise you as follows:

As you will note from an examination of Mr. Beardsley's opinion, he relied upon and particularly stressed a Pennsylvania Court of Appeals case, Downing v. School District of Erie, which case was subsequently reversed by the Supreme Court of Pennsylvania. Said court, in passing upon the question of the right of a school district to insure its property against loss by fire in a mutual company, held that a statute which authorized such contracts was not a violation of the constitutional prohibition as to the loaning of credit and that "assessments" and "premiums," as used in relation to such contracts, are interchangeable words and mean the same thing, being the consideration for the contracts. 147 Atl. 239.

School districts in Colorado have been expressly authorized to insure their properties in Mutual Companies under the provisions of Section 2564, C. L .1921. Said section is clear and explicit and, in our opinion, does not so plainly violate Sections 1 and 2 of Article XI of the Constitution of the State of Colorado as to justify us in holding the statute to be beyond legislative power. The New Jersey Court, under a constitutional provision similar to our own, said, in part:

> "The scheme of mutual insurance in such associations does not fasten upon the members any liability which municipal corporations may not, with reasonable safety assume, for the limit of obligation is always fixed at the time the insurance is obtained and is rarely enforced beyond what would be charged for insurance on the non-mutual plan. By giving its premium notes, the city did not loan its credit to the company, * * * nor did the so-called 'membership' of the insured render the city in any sense the owner of the stock or bonds which belonged to the company, or a holder of stock in the company, within the fair import of the constitutional prohibition."
>
> *French v. City of Millville*, 49 Atl. 465.

Numerous other authorities are to the same effect and, since all presumptions are to be drawn in favor of the validity of legislation, we are of the opinion that Section 2564, C. L. 1921, authorizing public and private corporations to hold policies of insurance

in a mutual insurance company, does not violate the constitutional provisions referred to above, and that school districts have the right to insure property against fire in a mutual company.

The opinion referred to above, under date of April 19, 1929, written by A. L. Beardsley, former Assistant Attorney General, is hereby withdrawn and overruled.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

By HAZEL M. COSTELLO,
Assistant Attorney General.

276 CORPORATIONS

To Chas. M. Armstrong, Sept. 12, 1932.

Under Ch. 70, S. L. 1931, the Secretary of State may accept a part of the delinquent tax of a corporation, prior to its being declared defunct; but if the corporation has been declared defunct, it may not be accepted.

If a corporation has failed to pay its license tax for two years, and has also failed to file its annual report for the second year, and thereafter reinstates without filing an annual report, and fails to file an annual report for the third year such corporation should not be advertised again in the third year.

277 BUILDING AND LOAN

To Eli M. Gross, Sept. 12, 1932.

A proposed building and loan certificate which indicates that the holder thereof is a member, and entitled only to the dividends to mature stock, and not entitled to a definite rate of interest, is legal.

278 STATE TEACHERS COLLEGE

To C. N. Jackson, Sept. 14, 1932.

1. Sec. 304, C. L. 1921, makes provision for the issuance of certificates of indebtedness where an appropriation has been made and exceeded and the necessity for creating an indebtedness and issuance of certificates of indebtedness is made necessary by a casualty occurring after the making of the appropriation.

2. Procedure.

3. Classification. Appropriations for actual emergencies are usually considered to be first class appropriations by the legislature. (Secs. 82, 112, C. L. 1921; Ch. 49, S. L. 1931.)

279 BUILDING AND LOAN

To B. F. Stallings, Sept. 16, 1932.

The Building and Loan Commissioner has no control over the companion companies of building and loan companies, which are not building and loan companies.

280 ELECTIONS

To Mrs. Clara Goddard, Sept. 16, 1932.

Sec. 7532, C. L. 1921, does not require that a county chairman or woman shall be either a delegate or a precinct committeeman or woman.

281 SCHOOLS

To R. B. Sprull, Sept. 19, 1932.

A school district is not authorized to pay cash for current operating expenses, but should issue school district warrants drawn upon the proper fund, which should be handled through the office of the county treasurer. (Sec. 4, Art. 9, Colo. Const.)

282 ELECTIONS

To L. C. Kinnikin, Sept. 24, 1932.

Sec. 2261, R. S. 1908, is still the law regarding aid to be given to illiterate voters.

283 HAIL INSURANCE

To T. P. Detamore, Sept. 26, 1932.

Where a tax has been levied, assessed and collected for a risk, and no claim has been presented as required by Sec. 11, Ch. 111, S. L. 1929, it cannot be refunded.

284 TAXATION

To Colorado Tax Commissioner, Sept. 26, 1932.

The fact that a municipality owns some or all of the capital stock of a corporation, does not exempt the property of said corporation from taxation.

September 26, 1932.

Colorado Tax Commission,
State Office Building,
Denver, Colorado.

Gentlemen:

Reference is made to your letter of September 1, 1932. to which was attached a copy of a petition dated August 26, 1932, signed by the Chairmen of the Boards of County Commissioners of Adams, Arapahoe, Douglas and Jefferson Counties, requesting that your Board direct the levy of taxes upon the High Line Canal and Irrigation Ditch owned by the Northern Colorado Irrigation Company, and to your inquiry reading as follows:

> "Will you please advise us if, as a matter of law, this Company should be assessed by us as a public utility, both for the future and for the intervening years since 1924."

In reply, you are advised that it is the opinion of this office based upon the facts set forth in the petition of the County Com-

missioners, which facts you state are "substantially correct," that as a matter of law the Northern Colorado Irrigation Company should be assessed by the Colorado Tax Commission as a public utility, both for the future and for the years intervening since 1924, and this despite the fact that all of the stock of the Company is owned now and has been owned since 1924 by the Board of Water Commissioners of the City and County of Denver.

The principle of law that a corporation is an entity in law, separate and distinct from its stockholders, is so elementary and of such long standing that authorities to sustain it are not believed necessary. The Northern Colorado Irrigation Company is, therefore, an entity, separate and distinct from the owner of its capital stock, and that distinction is in no way obliterated nor are the entities merged by reason of the fact that the Board of Water Commissioners of the City and County of Denver has acquired all of the capital stock of the Company. The Company is still in existence. The Northern Colorado Irrigation Company and not the City and County of Denver still owns the same property upon which the Company paid taxes from its organization in 1879 until 1924, when the ownership of the stock passed into the hands of the Board of Water Commissioners of the City and County of Denver.

The Supreme Court of Colorado has had before it for decision two cases which are in point in the instant matter. In both of those a tax was asserted against real property owned by a municipality. And in both decisions the Court made the ownership of the property the absolute test of exemption.

The first case is *City of Colorado Springs v. The Board of County Commissioners of Fremont County* (1906), 33 Colo. 231. In that case the City of Colorado Springs purchased certain lands and an irrigation ditch and water rights in connection therewith. The purpose of the purchase was to secure water rights with which to increase the water supply of the City. After the purchase the water rights were severed from the lands, the point of diversion was changed and the lands owned by the City were leased by it to neighboring ranchmen and were not thereafter used for municipal purposes. The material difference between the Colorado Springs case and the matter under consideration is that the City and County of Denver owns all the stock of a corporation which owns the property sought to be taxed, while in the Colorado Springs case the City owned in fee the property sought to be taxed.

The lands in the Colorado Springs case lay in Fremont County, the authorities of which sought to tax them. In deciding that the lands were not taxable the Court (234) said:

> "To sum up. The city *owns* and is entitled to hold these lands—they are property real of the municipal corporation, the city of Colorado Springs. According to the

express language of the constitution, *there is but one condition essential to their exemption from taxation,* and that is, *ownership by the city.* (Emphasis supplied.)

Patently this one essential condition is not met in the instant matter. Here the lands sought to be taxed are owned by the Northern Colorado Irrigation Company, a private corporation for profit, and not by the City and County of Denver.

The other case above referred to is *Stewart v. City and County of Denver* (1922), 70 Colo. 541. In that decision the Court referred with approval to the Colorado Springs case, *supra*, and to cases cited therein, and at page 516 said:

> "The property described * * * lies outside of the territorial limits of the municipal corporation *owning* the same, and a part of such property is alleged, in effect, to be unnecessary for waterworks or other municipal purposes. These circumstances, however, do not bring the property within any exception to the constitutional provision, * * * simply because there is no exception concerning the character or situation of the property. *All* property of a municipal corporation is included." (Emphasis supplied.)

In view of these decisions by the highest Court of this jurisdiction which make ownership of property by a municipal corporation the absolute test of exemption when such property is sought to be taxed, this office concludes that the property in this matter owned by the Northern Colorado Irrigation Company, all the stock of which Company is owned by the City and County of Denver is not now exempt from taxation any more than it was when others owned all of the capital stock of the Company. (See City of Louisville v. McAtter (1904), 26 Ky. L. 425, 81 S. W. 698, for a case almost identical with the instant matter in which the Court's decision sustains our conclusion as above indicated.)

With reference to that part of your inquiry concerning the propriety of assessing the property of the Northern Colorado Irrigation Company both for the future and for the years intervening since 1924, it is our opinion that Section 7321, C. L. 1921, confers upon your Commission ample authority for making such assessments.

If it be argued that because the City and County of Denver owns all the capital stock of the Northern Colorado Irrigation Company the municipality is therefore the sole beneficial owner of all the property of the corporation and that hence the taxing authorities should overlook the corporate entity intervening between the property and the municipality and exempt the property, it is believed that that argument may be effectually answered by reference to Article X, Section 4, and Article XI, Section 2 of the Constitution of Colorado, which read as follows:

Art. X, Sec. 4. "The property, real and personal, of the state, counties, cities, towns and other municipal corporations and public libraries, shall be exempt from taxation."

Art. XI, Sec. 2. "Neither the state, nor any county, city, town, township or school district shall make any donation or grant to, or in aid of, or become a subscriber to, or shareholder in any corporation or company, or a joint owner with any person, company or corporation, public or private, in or out of the state, except as to such ownership as may accrue to the state by escheat, or by forfeiture, by operation or provision of law; and except as to such ownership as may accrue to the state, or to any county, city, town, township or school district, or to either or any of them, jointly with any person, company or corporation, by forfeiture or sale of real estate for non-payment of taxes, or by donation or devise for public use, or by purchase by or on behalf of any or either of them, jointly with any or either of them, under execution in cases of fines, penalties or forfeiture of recognizance, breach of condition of official bond, or of bond to secure public moneys, or the performance of any contract in which they or any of them may be jointly or severally interested."

Article X, Section 4, in the cases above cited, has been construed by the Colorado Supreme Court to mean that a municipality must actually own property exempt from taxation. Section 2, Article XI, sets out in detail the methods by, and the circumstances under, which a municipality may become the owner of shares of capital stock in a private corporation. In neither Section of either Article is there any reference to the exemption of the property of a corporation in which a municipality might become a shareholder under the circumstances set forth.

From this it seems plain that those who framed the constitution had no intention that the property of a corporation should be freed from taxes simply because a municipality happened to acquire some or all of the capital stock of that corporation in some manner provided by the constitution.

But in the instant matter, in the opinion of this office, the City and County of Denver did not become the owner of the capital stock of the Northern Colorado Irrigation Company in a manner provided by the constitution and therefore the situation in which the municipality now finds itself with regard to taxes on the property of the corporation could never have been contemplated when the constitution was adopted, and therefore it is apparent for an

additional reason that no exemption could have been intended to apply to the corporate property here in view.

Trusting this gives you the desired information, we are,

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

By GEORGE T. EVANS,
Assistant Attorney General.

285 ELECTIONS

To E. E. Anderson, Sept. 27, 1932.

Inasmuch as there is considerable confusion regarding Sec. 7557, C. L. 1921, it is our opinion that if a certificate of nomination is presented to a county clerk and recorder, containing the proper number of signatures and the proper oath, it is his duty to accept such certificate for filing, as it is not his duty to try to determine whether the statements set out in the certificate are true or false.

286 BUILDING AND LOAN

To Eli M. Gross, Sept. 27, 1932.

Where a foreign building and loan association has deposited securities in Colorado, as provided in Secs. 1110, 1111 and 1112, C. L. of Utah 1917, under our retaliatory statute, and has ceased to do business in this state, the securities should remain on deposit as long as there is any liability of said company to Colorado residents.

287 ELECTIONS

To W. A. Lusk, Sept. 28, 1932.

In order for a person's name to go on the general election ballot, it will be necessary for the name to be written in as many times as is required by Sec. 2, Ch. 98, S. L. 1927, relating to designation of candidates by petition at primary elections. (Ch. 91, S. L. 1931.)

288 MARRIAGE

To M. G. Meek, September 30, 1932.

A marriage license issued outside the State of Colorado has no force or effect in this state, and any clergyman or official who performs a marriage ceremony on the authority of a foreign license is subject to the penalty provided by Sec. 5559, C. L. 1921.

Such a marriage, however, would probably be evidence of a common-law marriage in this State.

289 ELECTIONS

To Harry F. Anderson, Sept. 30, 1932.

Under Sec. 11, Ch. 92, S. L. 1931, the members of both the receiving and counting boards at the General Election should select two judges or two clerks or one judge or one clerk of opposite political faith to deliver the election returns and ballot boxes.

290 ELECTIONS

To Governor Adams, Oct. 8, 1932.

Concerning nominations for vacancies in office.

October 8, 1932.

Hon. William H. Adams,
Governor of Colorado,
Capitol Building,
Denver, Colorado.

Dear Governor:

Pursuant to your oral request for an opinion with reference to the appointment of a county commissioner in Alamosa County, to fill the vacancy created by the death of Mr. Herman Emperius, please be advised as follows:

Section 8679, Compiled Laws of 1921, provides as follows:

> "In case of a vacancy occurring in the office of county commissioner, the governor shall fill the same by appointment, and the person appointed shall hold the office until the next general election or until the vacancy be filled by election according to law."

By virtue of said section it is clear that you as Governor may appoint a successor to Mr. Herman Emperius, who will serve as county commissioner until a commissioner is elected at the general election on November 8, 1932, to fill the unexpired term of the late Mr. Emperius.

The manner in which the major parties may nominate their candidates for the unexpired term of the late Mr. Herman Emperius may be inferred from the words of our Supreme Court in the case of People v. Kervin, 10 Colo. App. 472, wherein a similar situation was presented. While the court did not specifically pass upon the manner in which candidates might be noininated, it is our opinion that nominations may be made by the calling of special county assemblies, *or* by the respective county central committees if the county assemblies recently held, clothed their respective county central committees with authority to make certificates of nomination in case of a vacancy in any office.

It will also be necessary that the county clerk of Alamosa County include in his general election notice, a notice that a county

commissioner is to be elected in the district in which the vacancy has occurred, for the unexpired term of the late Mr. Emperius.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

By WALLACE S. PORTH,
Assistant Attorney General.

291 TAXATION

To John A. Carruthers, Oct. 11, 1932.

Property purchased with funds, which were exempt prior to release, is not immune from state taxation. (Citing McCurdy v. U. S., 246 U. S. 268.

292 MILITARY DEPARTMENT

To Col. W. C. Danks, Oct. 11, 1932.

Under Ch. 3, Ex. S. L. 1914, it would be proper to sell sufficient bonds to pay a claim for military services rendered in 1914.

293 SCHOOLS

To C. H. Jones, Oct. 14, 1932.

Money received by school districts for tuition by reason of students residing in other school districts, may be used for the payment of teachers' salaries or any other lawful purpose.

294 SCHOOLS

To James B. Wilson, Oct. 14, 1932.

School districts may not pay banks or other financial houses, 2% of amount of school district warrants, in order to induce such concerns to purchase the warrants.

295 SCHOOLS

To J. Paul Hill, Oct. 14, 1932.

Orphans who are residing in a school district upon order of the Denver Community Chest, their board being paid by said organization, are entitled to attend school in the district in which they reside without payment of tuition. (Citing Fangman v. Mayers, 90 Colo. 308.)

296 WORKMEN'S COMPENSATION

To Governor Adams, Oct. 17, 1932.

One who is furnished employment under the provisions of the Emergency Relief and Construction Act of 1932, is subject to the provisions of the Workmen's Compensation Act.

October 17, 1932.

Honorable Wm. H. Adams,
Governor of Colorado,
Executive Chamber, Capitol Bldg.,
Denver, Colorado.

Dear Governor Adams:

In compliance with your request for an opinion as to the status of persons who are furnished with work relief under Sub-section c, Sec. 1, Title 1 of the Emergency Relief and Construction Act of 1932, insofar as the provisions of the Workmen's Compensation Act of Colorado are concerned, I wish to advise as follows:

I am of the opinion that wherever a person is furnished work relief under the provisions of the Emergency Relief and Construction Act of 1932, such person is subject to the provisions of the Workmen's Compensation Act of Colorado and he is an employe within the meaning of that term as defined in Section 4383, C. L. 1921, as amended by Chapter 175 of the Session Laws of 1931.

That the administrative agency furnishing the work—whether state, city, county, town, irrigation or drainage district, school district, or public institution—and administrative board is respectively the employer and should have such employes insured and kept insured for the payment of such Workmen's Compensation in the State Compensation Fund, and such agency from its own funds should pay the premiums.

For those employes of the Governor of the State of Colorado or the Official Colorado State Relief Committee and the various county relief committees, a policy should be carried by the State Compensation Fund, in order to cover employes who are not covered by the policies of the various political subdivisions above referred to, so that all work relief employes will be protected.

Furthermore, there should be an agreement between the State relief committee and the various political subdivisions furnishing work relief that such Workmen's Compensation protection shall be furnished by and that all such employes shall be considered as employes of such subdivision.

Yours very truly,
CLARENCE L. IRELAND,
Attorney General.
By ARTHUR L. OLSON,
Assistant Attorney General.

297 BANKS AND BANKING

To Grant McFerson, October 18, 1932.

If a bank refuses to conduct its business in strict accordance with the provisions of Ch. 44, S. L. 1913, the State Bank Commissioner may revoke its authority to do business.

Only certain of a bank's general assets may be pledged to secure the deposits of a county treasurer.

October 18, 1932.

Hon. Grant McFerson,
State Bank Commissioner,
Denver, Colorado.

Dear Sir:

This is in answer to your request for an opinion under date of the 4th inst., in which request you call to our attention what you consider the illegal and unauthorized pledging, by banking institutions under state banking laws, of their general assets to secure the payment of public funds deposited in said banks by public officials.

You ask our opinion on the three following questions:

"1. What is the power of the State Bank Commissioner under conditions which indicate the illegal pledging of securities?

"2. What is the legal provision for pledging of any securities for the protection of other public money than that as specifically set out relative to deposits of a county treasurer?

"3. Should this department assume an aggressive position relative to the pledging of United States Government bonds for the protection of City funds or other public moneys?"

The first statutory enactment we find granting to banks authority to pledge their securities to insure the payment of public funds is found in Chapter 92, S. L. 1925, pages 241 and 242. This chapter authorizes "all banks, etc." to invest any of their moneys or deposits in Farm Loan Bonds issued by a Federal Land Bank or Joint Stock Land Bank organized pursuant to an Act of Congress, and further provides that these bonds shall be accepted as security for *all* public deposits. It seems plain to us, and it is our opinion that banks coming under your jurisdiction have the right to pledge Federal Loan Bonds and Joint Stock Farm Loan Bonds as security for *all* public funds deposited with them.

The next statutory provision we find relative to the pledging or hypothecation of securities by banks for public deposits is found in S. L. 1927, Chapter 65, Section 7, as follows:

"No bank shall pledge or hypothecate any of its securities except as collateral for direct bills payable and (or) for the protection of public funds, or moneys in said bank, in accordance with statutes now or hereafter enacted."

Noting the language "in accordance with statutes *now or hereafter enacted*" we find that there was enacted, prior to the enactment of this Section, Chapter 83, S. L. 1927, paragraph 2 of Section 1, dealing with the pledging of securities of banks to in-

sure payment of deposits of *County Treasurers only*. It specifically sets out that a *county treasurer* may take a bond from his depository bank or in lieu thereof,

> "interest bearing securities of the United States, of the State of Colorado, of counties, cities, towns or school districts situated within said state, Farm Loan Bonds issued by any Federal Land Bank or joint stock land bank organized under an Act of Congress approved July 17, 1916, entitled An Act" * * *.

It is readily seen that only these securities may be pledged or hypothecated to secure deposits of County Treasurers and that the pledging of other securities by banks of its general assets is unlawful.

Answering then your first question, Section 2725 C. L. 1921, provides:

> "When a bank is in an insolvent condition, or refuses for more than ten days to conduct its business in strict accordance with the provisions of this Act, the State Bank Commissioner may forthwith revoke the authority of said bank to do business and annul its charter and take possession thereof and of all its property and assets."

From the language of this section full power is vested in your office to discourage and terminate practices of banks, whatever they may be, if they fail "to conduct its (their) business in strict accordance with the provisions of this Act * * *."

Under this last above quoted section you can command the cessation of this practice or take over the bank.

Answering your second question, banks, to secure the deposits of County Treasurers may pledge of their general assets only interest bearing securities of the United States, of the State of Colorado, of counties, cities, towns or school districts situated within said state, Farm Loan Bonds issued by any Federal Land Bank or joint stock land bank organized under An Act of Congress approved July 17, 1916.

Other public funds but not county funds on deposit in banks may be secured with only the joint-stock farm loan bonds, and Federal loan bonds mentioned in Chapter 92, S. L. 1925.

Answering your third question this office would not assume to advise you as to how aggressive you should or should not be in this regard, that being a matter for you to determine in your official capacity.

Generally the law provides:

> "The business of banking is a proper subject for regulation under the police power of the state because

of its nature and the relation which it bears to the fiscal affairs of the people and the revenues of the state; and the police power of a state extends even to the prohibition of engaging in the business of banking except upon such conditions as the state may prescribe."

7 C. J. Banks and Banking, Pg. 480, Sec. 10.

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.

By E. J. PLUNKETT,
Assistant Attorney General.

298 ELECTIONS

To Denzell L. Yarnell, Oct. 18, 1932.

One who has voted in a primary election, is not prevented from becoming a candidate on an Independent or Socialist ticket. (Citing Pease v. Wilkins, et al., 53 Colo. 404.)

299 ELECTIONS

To Chas. M. Armstrong, Oct. 18, 1932.

A certificate of nomination for a district office greater than a county, requires 100 signatures, and each signer must add his place of residence. (Sec. 7557 C. L. 1921.)

300 APPROPRIATIONS

To John M. Jackson and William D. MacGinnis, Oct. 22, 1932.

The State Auditor may issue warrants to pay an appropriation, even though funds are not available with which to pay the same.

October 22, 1932.

Hon. John M. Jackson,
State Treasurer,
Capitol Building,
Denver, Colorado.

Hon. William D. MacGinnis,
State Auditor,
Capitol Building,
Denver, Colorado.

Gentlemen:

In re: Warrants issued for the purpose of building the State Teachers College Heating Plant.

You have requested this office for an opinion as to whether or not the State Auditor may legally issue warrants for the building of a heating plant at the State Teachers College in Greeley, Colorado, when apparently funds are not available with the State Treasurer to pay appropriations of the third class at this time in

which class this appropriation falls; and if said warrants may be legally issued if the State Treasurer may endorse the warrants to bear interest until paid as by law provided.

An appropriation was made by the Legislature and approved by the Governor May 24, 1931, in the sum of $120,000, which appropriation provides:

> "Warrants against said appropriation shall be drawn by the Auditor of State and paid by the State Treasurer upon vouchers certified by the President and Secretary of the Board of Trustees of said institution." (Chapter 49, S. L. 1931.)

This appropriation in every respect is a legal appropriation, properly passed by the Legislature and approved by the Governor.

Section 16 of Article X provides:

> "No appropriation shall be made, nor any expenditure authorized by the general assembly, whereby the expenditure of the state, during any fiscal year, shall exceed the total tax then provided by law and applicable for such appropriation or expenditure, unless the general assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section eleven of this article, to pay such appropriation or expenditure within such fiscal year. * * *"

It will be noted from reading this section of the constitution that the General Assembly is limited to making appropriations which shall not exceed the total tax provided for and applicable for such appropriations or expenditures. The only interpretation that can be placed on this section is to the effect that the General Assembly shall ascertain what the estimated revenue for the period is likely to be from various sources and shall keep all appropriations as near as possible within that estimated revenue. The last General Assembly did not at the time of passing this appropriation exceed the estimated revenues from the various sources then contemplated, but the reduction in revenues from various sources is the result of conditions brought about and existing since the appropriation was made and thus could not in any manner affect the appropriation. Contemplating that such a condition might happen, the General Assembly enacted Section 288 of the Compiled Laws of 1921, which provides:

> "In case the available revenues of the state for any fiscal year are insufficient to meet all the appropriations made by the general assembly for such year, such appropriations shall be paid in the following order: * * *"

This section then goes on and classifies appropriations made by the legislature into first, second, third, fourth and fifth class appropri-

ations. The particular appropriation in question falls within the third class. It is evident from this section that it is the duty of the State Treasurer when a warrant is presented to him for payment, in the event there is any question in his mind as to whether or not there are sufficient funds available for the payment of all warrants, to ascertain to which of said classes of appropriations such warrant belongs, and if the said warrant falls in one of the lower classes, such as the warrants in question do, then if in the opinion of the State Treasurer there are not sufficient funds to pay such class of appropriations and at the same time to pay all warrants having a preference pursuant to Section 288, which he knows and has reason to believe will be presented to him for payment, as he may determine from the records of his office and the appropriations made by the last legislature, then it is his duty to refuse the payment of said warrants of such lower classification and proceed under Sections 112 and 113, Compiled Laws of 1921, which provide:

> "Sec. 112. State warrants shall bear interest at the rate of four per cent per annum, from the date of their presentation for payment. * * *"
>
> "Sec. 113. The treasurer shall keep a record of the number and amount of the warrants so presented and endorsed for non-payment, and when there are funds in the treasury for the payment of an amount sufficient to render it advisable, he shall give notice to what number of warrants the funds will extend and which he will pay, by the insertion in a newspaper printed at the seat of government. At the expiration of thirty days from the day of the last insertion, interest on the warrants so named as being payable shall cease. When interest is paid upon the warrants, the amount shall be endorsed upon the warrant and be signed by the party receiving it."

These two sections read together plainly indicate that a warrant may be issued even though the State Treasurer has not available funds to pay the same.

Section 75, Compiled Laws of 1921, provides for the registration of warrants, whether they are paid or not, and Section 81 provides that all warrants *not paid* shall have stamped thereon the following:

> "Presented (here insert date of presentation). No funds. This warrant draws interest from this date, at the rate of four per cent per annum."

The treasurer shall sign said endorsement and redeliver the warrant to the bearer thereof. (Section 81 provides for 6% interest but is superseded by Section 112 above quoted which provides for 4%.)

Section 74 provides as follows:

> "Every fund in the hands of the state treasurer for disbursement shall be paid out in the order in which the warrants drawn thereon and payable out of the same are presented for payment; provided, that whenever a warrant shall be presented, if there shall be funds in the treasury to pay the same, and all other warrants which have been presented prior thereto, and still remaining unpaid, it shall be the duty of the treasurer to pay the same."

This section must be read in conjunction with Section 288 above quoted and means that if there are not funds available for all classes of appropriations as may be determined by the State Treasurer, then Section 288 supersedes Section 74 and the State Treasurer must conserve the funds for the payment of first and second class warrants and refuse payment to the third or other classes of warrants and endorse the same for the payment of interest, pursuant to Section 81 above quoted.

Section 76 provides for the publishing of notice for warrants to be paid. This section, of course, must also be read in conjunction with Section 288, and if funds are not available to pay all first and second class warrants and some of such warrants are registered "no funds," then, of course, when such funds are available the Treasurer would publish notice to pay those classes of warrants belonging to those classes of appropriations and not publish notice to pay warrants of the third or other classes of appropriations, unless in the opinion of the Treasurer there were funds available for such third class or other class of appropriation, and at the same time provide for the payment of all first and second class appropriations.

In the opinion of the Attorney General, therefore, the State Auditor should issue the warrants for the building of this heating plant as though funds were available to pay this appropriation and since funds are not available to pay third class appropriations the State Treasurer should endorse said warrants for the payment of interest, pursuant to Section 81 of the Compiled Laws of 1921, and return the same to the payee or his representative. In the event funds do not become available for the payment of said warrants the State Treasurer should report that fact to the next Legislature so that it may provide for the payment and retirement of the same.

Respectfully submitted,

CLARENCE L. IRELAND,
Attorney General.

301 **SCHOOLS**

To Una S. Williams, Oct. 25, 1932.

Qualified electors in a third class school district have the power to authorize, and pay for any kind of transportation, which in the discretion of the directors, is for the benefit of the district. (Ch. 166, S. L. 1929.)

302 **BARBERS BOARD**

To Barbers' Examiners, Oct. 25, 1932.

Inasmuch as Sec. 4747, C. L. 1921 as amended by Sec. 8, Ch. 64, S. L. 1929, provides for the issuance of a license to practice as an apprentice, and makes no provision as to when such apprentice must take an examination for a barber's license, the Board of Examiners cannot refuse to an apprentice barber's license if the renewal fee is tendered in proper time.

303 **ELECTIONS**

To L. F. Mitchell, Oct. 27, 1932.

The custom of candidates for office putting candy and cigars at the different polling places is a silent or indirect way of electioneering and a direct violation of Sec. 7841, C. L. 1921, and subject to the penalty provided by Sec. 7843.

304 **ELECTIONS**

To Chas. M. Armstrong, Oct. 29, 1932.

Sec. 7557, C. L. 1921, permits an amendment to procure sufficient signers less than 30 days before election, but only in the case of duplication of names appearing on two or more certificates of nomination for the same office. (Citing O'Connor v. Smithers, 45 Colo. 23.)

305 **ELECTIONS**

To Georgia Putnam, November 3, 1932.

One who desires to register to vote, and whose right has been challenged, may be registered if he files the proper affidavit. If perjury is committed in making the affidavit, the matter should be taken up by the District Attorney.

306 **ELECTIONS**

To Martha Pfalzgroff, November 3, 1932.

All ballots cast under the proper circumstances, and marked substantially as the law provides, should be counted, if, as so marked by the voter, it is possible to determine his choice and if his intent to designate the person for whom he intended to vote can be reasonably gathered therefrom. (Secs. 7751, 7752, C. L. 1921; Baldwin v. Wade, 50 Colo. 109.)

307 TAXATION

To Board of Education, November 4, 1932.

The legislature assumed the 100% of the taxes levied for the purpose of paying teacher's salaries from the general county fund would be collected, and County Commissioners may not levy additional taxes by reason of anticipated uncollected taxes. (Secs. 8446-8448, incl., C. L. 1921.)

308 ELECTIONS

To John M. Boyle, November 15, 1932.

If applications for absentee ballots were made in good faith, though after the time prescribed by statute, and the ballots were sent out and were voted, the electors should not be disfranchised because of an honest mistake of the officials in sending out ballots on an application made after the statutory time. Baldauf v. Gunson, 90 Colo. 245.)

309 TAXATION

To Andy Weddington, November 15, 1932.

A county treasurer is not authorized, in the absence of statute, to accept school district warrants in payment of taxes. Colorado has no such statute.

310 ELECTIONS

To John Anderson, November 15, 1932.

The canvassing board has the right to reject void and illegal absent voters' ballots, under Sec. 4, Ch. 94, S. L. 1929. (Bullington v. Grabow, 88 Colo. 561.)

311 COSMETOLOGISTS

To State Board Cosmetology, November 17, 1932.

Instructors and managing cosmetologists are entitled to be registered as such on complying with the statutory requirements and paying the proper fee. (Ch. 74, S. L. 1931.)

312 INSURANCE

To Jackson Cochrane, November 18, 1932.

Under Sec. 2550, C. L. 1921, in figuring a retaliatory tax due from a foreign insurance company, the Insurance Commissioner should allow Colorado excess fees to be applied toward the other State's excess tax. (Pac. Mut. Life Ins. Co. v. St. of Washington, 296 Pac. 813.)

313 STATE RETIREMENT ASSOCIATION

To Dr. Chas. A. Lory, November 18, 1932.

Under Sec. 1, Ch. 157, S. L. 1931, librarians employed at the State Agricultural College are eligible to the benefits of the Re-

tirement Act, providing they are regularly employed by the state, are permanent employes, and have ben continuously employed for more than one year. Such librarians would not become eligible by teaching summer school.

314 SCHOOLS

To State Board of Land Commissioners, November 23, 1932.

Sec. 2, Ch. 150, S. L. 1931, being somewhat ambiguous in terms, it is our interpretation that an election by the qualified electors of a school district must be held to vote upon the question of the issuance of refunding bonds.

315 MOTOR VEHICLE LAW

To C. M. Armstrong, December 10, 1932.

The Secretary of State has the right to appoint such officers as he deems necessary to enforce the provisions of the Uniform Motor Vehicle Act (Ch. 122, S. L. 1931).

As to compensation the general rule is: "Where one enters into a public office for which no compensation has been provided by law he is presumed to give his services." (Merwin v. Boulder, 29 Colo. 180.)

Citing 48 C. J., p. 1014.
Mecham, Public Officers, Sec. 856.
McGovern v. Denver, 54 Colo. 411, 22 R. C. L., Sec. 301.

316 COLORADO STATE HOSPITAL

To Thos. A. Duke, Dec. 14, 1932.

Owners of property adjoining the State Hospital on the north, who claim they have been paying taxes on property they own and that part of same lies south of the north fence of the hospital grounds, are not entitled to recover from the Board of Corrections for taxes inadvertently and voluntarily paid over a period of years, because they have acquiesced in the location of their common boundary at said fence for more than 20 years. (Sec. 303, Colo. Code of Civil Procedure, C. L. 1921; Sec. 6418, C. L. 1921.)

317 COUNTY JUDGE

To John H. Galbreath, December 17, 1932.

Concerning appointment of county judge and his tenure of office.

December 17, 1932.

Mr. John H. Galbreath,
Attorney at Law,
Pagosa Springs, Colorado.

Dear Sir:

Answering your letter of December 9, relative to the appoint-

ment of a county judge and his tenure of office, it is our opinion that if the present county commissioners make an appointment before the second Tuesday in January, 1933, the appointee will hold over until the next general election for county judge in 1937, and until his successor is elected and qualified. In support of our opinion we call your attention to Section 29, Article VI, of the State Constitution, which reads as follows:

> "* * * Judges of the supreme, district and *county courts* appointed under the provisions of this section shall hold office until next general election and until their successors elected thereat shall be duly qualified."

Section 5733, C. L. 1921, provides:

> "If any vacancy in the office of county judge should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy, until a successor shall be elected according to law; *Provided,* That if the unexpired term exceed one year the vacancy shall be filled by election."

(The proviso above is not considered herein.)

This language seems plain and in our mind conveys the idea that an appointee to the office of county judge can only be replaced as an incumbent of the office by one duly elected at the *next general election,* and duly qualified, and not by another and subsequent appointee for a succeeding term. In Lawrence v. Hanley, 84 Mich. 400, the facts were:

> "Charles P. Collins was a duly-elected county auditor, and the regular term of his office would have expired on December 31, 1890. His successor was by the statute to be elected on November 4, 1890, at the general election. Candidates were nominated by the different political parties, and Joseph Nagel was duly elected as such successor. Before the expiration of Collins' term, and before Nagel had taken any steps to qualify, Nagel died, on December 9, 1890. On January 6, 1891, the Governor appointed Henry J. A. Leteker to fill the supposed vacancy caused by the death of Nagel. Collins, under legal advice, and claiming that there was no vacancy in the office that could be filled by appointment of the Governor, and that he held the office under the laws of this State until his successor was duly elected and qualified, refused to vacate his office."

On page 406 the court said:

> "Collins had an existing title to the office of auditor at the time of Leteker's appointment,—a title that could

only be extinguished by the *election* and qualification of a successor. Leteker's appointment was therefore void."

In People v. Lord, 9 Mich. 227, one North was elected judge of the probate court. In November, 1860, he was re-elected to succeed himself, his second term to commence January 1, 1861. Shortly after his second election he died on November 22, 1860. The appointing power, the Governor, then appointed one Van Valkenburg to fill the vacancy. Thereafter, the Governor supposing that the appointment of Van Valkenburg terminated on January 1, 1861 (the date North's first term would have terminated), appointed one Lord on January 1, 1861, for the succeeding new term. On April 1, 1861, a special election, which was provided by statute, was had for the office at which election one Andrews was elected. Both Van Valkenburg and Lord contended that the election of Andrews was invalid, and both claim the office by virtue of their appointments. The Michigan Constitution then provided:

"* * * that the Judge of Probate shall be elected and shall hold his office for four years, and '*until a successor is elected and qualified.*' In case of vacancy the Governor is to appoint a person to continue '*until a successor is elected and qualified. When elected, such successor shall hold his office the residue of the unexpired term.*'" (pp. 230-231).

The court said on page 231:

"These provisions are so free from ambiguity that there is no room left for construction. A person appointed to fill a vacancy can only be superseded by one who is duly *elected*, and holds in the same manner as if originally the incumbent until *thus* superseded. His term of office did not expire on the first day of January, 1861, unless some one elected and qualified was then ready to take the office. As Mr. North was re-elected, and was then dead, the election had then fallen through. This was not a technical *vacancy*, but it was a case where a new election was expressly provided for by Sec. 26, Compiled Laws, which authorizes a special election 'when the right of office of a person elected to any of the aforesaid district or county officers shall cease before the commencement of the term for which he shall have been elected.' We conceive this to be just such a case."

You will note the facts above set out are almost identical with your case. People v. Lord, supra, was affirmed in Lawrence v. Hanley, 84 Mich. 399, 404 (1891) supra, the court saying:

"But this is not such a vacancy as is contemplated by this statute. This is a case where the full term is to

be supplied, because the person elected to fill such term has died before his term commenced. It is the plain intention of all the statutes, taken together, that this office shall be an elective one, and the Governor is not authorized to fill it for a full term. This must be done in such a case as this by a special election."

While the Michigan cases cited indicate that the election was a special election, we see no difference, in this regard, whether the election be special or general.

There is another phase of your questions which seems to bear out the idea that one appointed to the office of county judge before January 10, 1933, would hold over for the succeeding term for which Judge Byrne was re-elected last November. This is the matter of qualifying as provided by Sec. 29, Art. VI, State Constitution. It seems from a reading of the Boughton case, 5 Colo. 487, that if a county judge-elect has qualified and dies that a vacancy is then created, but that if the county judge did not qualify then no vacancy in the succeeding term exists for which an appointment can be made and the incumbent first appointed holds over for the succeeding term. On page 491, we find this language:

"The court upon a careful review of the authorities, held that the death of the judge elect after having qualified, but before the commencement of his term, had the effect of creating a vacancy on the expiration of the antecedent term. The court says: 'By the terms of the constitution, Gale's term was to cease when a successor should be elected and qualified. His successor, McCord, was duly elected and duly qualified, and when that occurred Gale's right to hold over ceased, and the death of that successor before his term commenced did not revive a right in Gale, which ceased when McCord qualified.'

"The cases which hold, under similar constitutional provisions, that the death of the officer elect before entering into possession of his office creates no vacancy, were reviewed and examined, and shown to be based upon the fact that such deceased officer had not qualified in his office. For this reason these cases sustain the right of the incumbent to hold over until a successor shall be elected and qualified."

See 22 R. C. L. Public Officers, Section 95 note 20. The Wyoming case, 99 Pac. 869, cited under this note on page 364 states:

"By the apparent weight of authority it is held that where one elected to an office dies after he has qualified, though before the commencement of his term, a vacancy

> is created in the new term which may be filled as by law provided, and the previous incumbent will not be entitled to hold over as against one duly appointed and qualified to fill the vacancy, but that where the person elected dies before having qualified a vacancy is not created, and the incumbent will be entitled to hold over to the time fixed by law for the regular election or appointment of a successor."

See also State ex rel. Lloyd v. Elliott, 45 Pac. 346.

Section 8832, C. L. 1921, provides that a county judge whether re-elected or not may hold over in the office after the expiration of the term.

The case of People v. DeGuelle, 47 Colo. 13, might seem to be contrary to this opinion, but the Boughton case deals with a *state* office and, the DeGuelle case with a county office and are based on different sections of the constitution, viz.: Sec. 29, Art. VI, and Sec. 9, Art. XIV. Sec. 9 of Art. XIV concerns the filling of vacancies in county officers *only*, and the office of county judge is *not* a county office. (See People v. Dixon, 53 Colo. 507.)

Therefore, Sec. 9, Art. XIV involved in the DeGuelle case, supra, does not apply to county judges, and for that reason in our opinion, the case and reasoning therein do not apply. In fact in the DeGuelle case on page 24 the court said, in referring to the Boughton case,

> "It is to be observed that the constitutional provisions determinative of this case, were not there under consideration, or even referred to, and the conclusions arrived at in that case in nowise conflict with the results here reached."

In conclusion, we wish to call your attention to the last paragraph of Section 95, 22 R. C. L. Public Officers:

> "Furthermore, the general rule is that if the deceased was himself the incumbent of the office and was elected to succeed himself, a vacancy is created in the first term, by his death; but, at the commencement of the second term, no new vacancy arises in the new term for which he has been elected."

Yours very truly,

CLARENCE L. IRELAND,
Attorney General.

By E. J. PLUNKETT,
Assistant Attorney General.

318 BUILDING AND LOAN ASSOCIATIONS

To Eli M. Gross, December 19, 1932.

Associations may change their by-laws, if it is done in accordance with the statutes and its charter and by-laws, but such action is binding only upon shareholders who become members after such change, or who consent to be bound thereby. (Citing Holyoke Building and Loan Association v. Lewis, 1 C. A. 127.)

319 MOTOR VEHICLE LAW

To James Pullar, December 20, 1932.

The 15 cents provided by Sec. 14, Ch. 122, S. L. 1931, as compensation to the county clerk and recorder as agent of the department is to be paid to the county clerk who performed the services and not to the incoming clerk elect.

320 PUBLIC TRUSTEE

To Governor Adams, January 2, 1931.

The only classification which governs the appointment of a public trustee in a county, is that fixing the salaries of county officers. (Chapters 77 and 147, S. L. 1929.)

321 PENITENTIARY

To Thomas A. Duke, January 3, 1931.

Auto License Plate Insurance Fund may not be transferred to the Fire Loss Fund for the purpose of liquidating indebtedness contracted against said last mentioned fund. (Sec. 33, Art. V, Colo. Const.)

322 COLORADO TAX COMMISSION

To Joseph A. Barron, February 26, 1931.

Act proposing to abolish the Colorado Tax Commission is unconstitutional. (Secs. 7322 to 7366, C. L. 1921; Sec. 15, Art. X, Colo. Const.)

323 SCHOOLS

To Elizabeth E. Bennet, May 6, 1931.

A school board may furnish transportation pursuant to the Session Laws of 1929, but in doing so they cannot refuse to carry a student because of his deficiency in school work, nor is the parent liable on any such arrangement.

324 TAXATION

To Colorado Tax Commission, June 29, 1931.

The mausoleum of the Fairmount Cemetery Association is not exempt from taxation. (Sec. 7198, C. L. 1921; Sec. 5, Art. X, Colo. Const.)

325 INITIATIVE AND REFERENDUM

To Walter R. Freeman, July 13, 1931.

A referred measure, when approved by a majority of the votes cast thereon, becomes operative from the date of the proclamation of the Governor, or in case no proclamation should be issued, at the end of thirty days after the vote has been canvassed. (Art. V, Sec. 1, Colo. Const.)

326 FRUITS AND VEGETABLES

To John J. Tobin, July 24, 1931.

Under Ch. 96, Sec. 22, S. L. 1931, no grower is privileged to pack for sale, offer for sale, consign for sale, either by truck, train or otherwise, or sell in straight or mixed quantities of one thousand pounds or more in weight, any of the commodities designated in said act, without first complying with the provisions of said act, *unless,* as is provided in said Sec. 22: he is selling or delivering his crop, or a part thereof, in bulk to a packer for grading, packing or storage within the state; he is manufacturing his crop into by-products; or he is selling his crop to some person actually engaged in the operation of a commercial by-product factory for the sole and express purpose of being used in the state in the manufacture of a by-product for resale. In other words, this section read as a whole and with the rest of the act means the same as if the word "or" preceding the phrase "to a packer for grading" in line 3 of said section was omitted.

The minimum weight requirements enumerated in Ch. 96, Sec. 24, S. L. 1931, pertain to a grower even though he is shipping his own commodity.

327 FRUITS AND VEGETABLES

To John J. Tobin, July 31, 1931.

Under Ch. 96, Sec. 17, S. L. 1931, every shipper of fruits or vegetables should be licensed, unless he has conformed with the provisions of Ch. 72, S. L. 1929, and this applies to the shipper of a single car.

Under Ch. 96, Sec. 24, S. L. 1931, whenever any mixed carload contains one-tenth or more in aggregate weight of any fruits and/or vegetables not named in said Sec. 24, such mixed carload is exempt in its entirety from all of the provisions of the act, and this applies to truck shipments as well as carloads.

328 SCHOOLS

To Florence R. Needham, September 14, 1931.

Sec. 481, C. L. 1921, is repealed by Ch. 164, S. L. 1903, by implication, and the Boards of Directors of School Districts are not now obligated to furnish clothing to needy pupils.

Under Sub-section 9 of Section 8333 C. L. 1921, it is the duty of the Board of Directors of a School District to provide books for an indigent pupil on the written statement of the teacher that the parents of the pupil are not able to purchase them.

329 TAXATION

To Charles E. Newmeyer, March 4, 1932.
Concerning tax sales and tax titles.

March 4, 1932.

Mr. Charles E. Newmeyer,
Editor, Denver Mining Record,
1829-31 Champa Street,
Denver, Colorado.

Dear Sir:

I duly received your letter of February 26, asking me to give you a statement of the present Colorado law concerning tax titles to mining claims.

In the discussion which follows, "C. L." means Colorado Compiled Laws of 1921, and "S. L." refers to Session Laws of Colorado.

A tax title to any land is based upon a tax deed which is issued by the county treasurer after the land has been sold for failure of the owner to pay taxes thereon.

As soon as may be after August 1, and before September 1, in each year the county treasurer mails tax notices to all delinquent taxpayers. Twenty days after mailing such notices he makes out a list of lands upon which taxes have not been paid, with an accompanying notice of sale on a day specified thereafter. C. L. Sec. 7402.

Notice of sale of property for delinquent taxes is required to be posted and published for at least four weeks before the sale. C. L. Sec. 7403, as amended by S. L. 1923, p. 544.

Sale is begun by the treasurer on the day named in the notice and continues from day to day until completed. If there is no bid for any particular tract offered, the treasurer passes it for the time and reoffers it the next day. When no more sales can be made, any remaining property is struck off to the county and a certificate of purchase is issued to the county in the same form as to other purchasers. Property bid in by the county is not again sold for taxes but remains the property of the county until sold by it or redeemed. C. L. Sec. 7409.

The sale of lands on which taxes remain delinquent begins on or before the second Monday in December of each year at the treasurer's office in each county, but in certain cases may be begun at a later date. C. L. Secs. 7410, 7411, as amended by S. L. 1925, p. 440.

Both the county treasurer and the county clerk and recorder keep a record of all tax sales in a well-bound book. C. L. Sec. 7415.

At all tax sales, the land is sold to the person who pays the taxes, charges, costs and penalties due, and who further offers to accept the lowest rate of interest on the amount bid. If no lower rate of interest than the rate prescribed by statute is offered, then the legal rate prevails. C. L. Sec. 7416.

Redemption from tax sales is provided for by S. L. 1925, p. 441, Sec. 6, amending C. L. Sec. 7430, as follows:

> "Section 6. That Section 7430 Compiled Laws of Colorado, 1921, be amended so as to read as follows:
>
> "Section 7430. Real property sold under the provisions of this Act may be redeemed by the owner, his agent, assignee or his attorney, or by any person having a legal or equitable claim therein, at any time before the expiration of three years from the date of sale, or thereafter at any time before the execution of the treasurer's deed to the purchaser, his heirs or assigns, by the payment to the county treasurer of the proper county to be by him held subject to the order of the purchaser, of the amount for which the same was sold, with interest thereon from the date of sale, at the rate per cent per annum bid by the purchaser at such sale not to exceed the rate of eighteen per cent per annum for the first six months, twelve per cent per annum for the subsequent six months, and the remaining period the rate of twelve per cent per annum, together with the amount of all taxes accruing on such real estate after the sale, paid by the purchaser and endorsed on his certificate of purchase, with interest thereon at the rate of twelve per cent per annum, on such taxes paid subsequent to such sale; but if the said subsequent taxes should be paid before the time when unpaid taxes levied for that year would become delinquent, interest shall only be computed from the time of their delinquency; Provided, That from the time when the purchaser is entitled to a deed, such taxes shall bear interest at eight per cent per annum, and no more, up to the time of applying for such deed; Provided, Further, That all statutory fees paid by the purchaser in connection with such certificate shall bear the same rate of interest and penalties as the original amount for which the property was sold, the same to be prorated among the several tracts described in said certificates, but in no case to exceed ten cents each."

For each sale of property at tax sale the county treasurer issues a certificate of purchase describing the property sold, the rate of interest bid, the total amount of taxes, interest and costs paid by the purchaser, etc. C. L. Sec. 7419.

These certificates of purchase may be assigned by endorsement, and the assignment when entered on the record of sales in the office of the county clerk and the county treasurer vest in the assignee or his legal representative all rights of the original purchaser. C. L. Sec. 7420.

Any holder of a tax certificate may pay subsequent taxes on the lands represented by the certificate, and have such taxes endorsed by the treasurer on the certificate. C. L. Sec. 7421.

At any time after three years from the date of sale, no redemption having been made, the holder of the tax sale certificate presents it to the county treasurer and asks for a deed. The treasurer's fee for this deed is $1.25 for each lot or parcel. When land has been bid in by the county at tax sale the county may sell and assign the tax sale certificate or the county may take a treasurer's deed at the expiration of the three-year period. The fee for such assignment is $1.00. S. L. 1927, pp. 612-615, amending C. L. Sec. 7422.

Before the county treasurer issues a tax deed he serves or causes to be served, personally or by registered mail, a written notice on every person in actual possession or occupancy of the land, and also on the person in whose name the land was taxed and all persons having an interest or title of record in the land, not more than five months and at least three months before the time of the issuance of the deed. The notice states when the land was sold, in whose name it was taxed, a description of the land sold, for what year taxed, when the time of redemption will expire or when the tax deed shall be issued. If no person is in actual possession or occupancy of the land, or the residence of interested persons cannot be learned, the treasurer publishes the notice in a newspaper in the county. This notice is published three times, the first time not more than five months and the last time not less than three months before the time when deed may issue. At the time of applying for a deed the applicant must pay to the treasurer twenty-five cents for each of such notices to be served and the cost of publication where publication is required. S. L. 1931, pp. 700-702, amending C. L. Sec. 7423.

Any person desiring to redeem after notice has been served or published by the treasurer and before the issuance of deed must pay the cost of notices as well as all other amounts paid by the certificate holder, together with interest and penalties. C. L. Sec. 7424.

A form of treasurer's deed is set out in C. L. Sec. 7425.

S. L. 1929, p. 465, supplements C. L. Sec. 7429, relating to the limitation of time for bringing an action to recover land sold for taxes, and is as follows:

> "That no action shall be maintained for the recovery of mining or placer property unless such action be brought within a period of two years from the commencement of actual possession obtained under tax deed."

Any person desiring to acquire tax title to mining property should consult the records in the office of the county treasurer of the proper county and also he should examine the records of the county clerk and recorder, or of some abstract company in the county, to determine the condition of the title to the property in which he is interested. He should also bear in mind that when tax titles are attacked in law, the statutes with reference thereto are strictly construed by the courts, and any defect in the procedure which has been followed leading up to the tax deed may result in its being set aside.

Very truly yours,

CLARENCE L. IRELAND,
Attorney General.

By OLIVER DEAN,
Assistant Attorney General.

330 FRAUDULENT PRACTICE ACT

To Chas. M. Armstrong, May 25, 1932.

Employes of the A. T. & T. Co., and Mt. States T. & T. Co., acting as salesmen in the sale of stocks of these companies do not come under the provisions of Ch. 95, S. L. 1931.

331 ELECTIONS

To V. S. Fitzpatrick, May 27, 1932.

It has been held in a number of cases that a promise by a candidate, made to the electors generally, to serve, if elected, for less than the fees or salary prescribed by law, constitutes bribery. (Citing 9 R. C. L. Sec. 128.)

332 INSURANCE

To Jackson Cochrane, August 11, 1932.

A mutual insurance company may not issue a policy which contains a cash and loan value provision. (Sec. 2557, and 2572, C. L. 1921.)

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